

THE
VERMONT
LEASE LANDS

WALTER T. BOGART

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THE VERMONT^c LEASE LANDS

By

WALTER THOMPSON BOGART, PH.D.

Professor of Political Science at Middlebury College



VERMONT HISTORICAL SOCIETY
MONTPELIER
VERMONT

1950

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TABLE OF CONTENTS

Chapter	PAGE
I. INTRODUCTION	
Description of the subject: Source of lease land reservations; Classification of lease lands—Wentworth reservations—Vermont reservations; Effects of obscurity of the subject on the beginning of the study; Second phase of the study—Difficulties respecting town data; Third definition of the study; Usefulness of the study. Terminological problems: Basis for present title; "Glebe." Town charter problems: Number of Wentworth charters; Number of Vermont charters—"Gores"—Unorganized places; Totals of towns. Extent of the lease lands. Lease lands as a subsidy. Lease lands as an administrative problem.	1
II. HISTORICAL BACKGROUND	
Reasons for presenting history of situation. Nature of the jurisdictional controversy: Official statements respecting the controversy; Private statements respecting the controversy; Central point of the controversy (Order in Council of 1740); Conditions contributing to the controversy—Isolation of the area—Massachusetts' part. Issue essentially between New Hampshire and New York: British failure at colonial administration; Genesis of controversy in Order in Council of 1764; Early conditions along New York's eastern boundary; Significance of New York boundary with Connecticut and Massachusetts. Various relevant land grant operations: Operations not affecting lease lands directly—Connecticut—French Seigneuries; Four major operations affecting lease lands; Effect of land speculation; Equivalent Lands; Massachusetts grants; New York—Walloomsack Patent; Operations of John Henry Lydius. Wentworth-New York conflict: Two phases of the colonial period; Period before the French War; After the French War—Influence of the War—Wentworth's granting operations—Later New Hampshire activity; New York's role—Legalistic position—Weak administration of the area—Influence of Colden—Land grants—Confirmatory grants—Suspension order—New York errors, Ejectment suits; Influence of New York grants—Effects of policy of New York governors—Lack of government in the area; Effects of disorganized conditions. Period of independence: Turbulent conditions; Land granting; Speculative interest; Conditions of government—Lack of competent personnel—Physical manifestations, Itinerant government, Record keeping. Statehood and period since 1791: End of external influences on lease lands; Stability of conditions; Demographic influences—Economic changes—Population changes; Other influ-	

1100 Eng. Acad. in. 7.50 6-27-67 Inv. 5542 P.O. 4028

Chapter	PAGE
ences on lease lands—Individual family moves—Forest industries; Activities of state government regarding lease lands; Political organization of the state—State-local relations—The county—Cities—Villages—Towns—The state; The federal government’s interest.	21

III. GENERAL CIRCUMSTANCES AFFECTING THE LEASE LANDS

Limitations on the scope of the study. Influences contributing to confusion regarding lease lands: Such influences with respect to Wentworth towns—The controversy—Isolation—Types of settlers—Absentee ownership—Lack of agents for the lease lands—Land speculation—Proprietorial system—Lack of community interest—Surveying conditions and difficulties, Social and economic difficulties, Technical difficulties; Such influences with respect to Vermont towns—Hurried granting—The controversy—Fear of invasion—Inaccessibility—Absentee ownership—Proprietors’ doings—Speculation—Lack of agents for lease lands—Surveying situation. Conclusions respecting above influences. Later influences adverse to good administration: Attitude of indifference by trustees (grantees) ; Attitude of indifference by state authorities; Amateur administrators—Town lease lands—Other lease lands, The Vermont Diocese of the Episcopal Church, Grammar schools—Tenure of officers—Lack of audits or other controls—Custodial habits regarding records—The University; Effects of the law on conveyancing; Terminological practices; Temperament of Vermonters.	59
--	----

IV. THE LEASE LANDS AND THE COURT: DURABLE LEASES AND ALIENATION

Introduction: Influence of the law on the lease land system; Organization of the analysis; Prevalent judicial philosophy—Comparison with non-lease-land situations; Extent of legal research—Effect of fragmentary early records and judicial reporting—Lack of good indexing. Doctrine of durable leases. Alienation: Conveyancing—Contrasting New Hampshire doctrine; Influence of common law; Attitude of court respecting construction of instruments—Deeds—Wills—Statutes—Charters; Attitude respecting New Hampshire-New York controversy; Adverse possession; Prescription (presumption)—Presumptions of acquiescence; Acquiescence; Proprietors’ doings; Public policy; Eminent domain; Police power.	99
---	----

V. THE LEASE LANDS AND THE COURT: OTHER JUDICIAL DOCTRINES

Ejectment actions. Obligation of contract: Attitude of court respecting legislative activity; Attitude of court respecting town line changes; Attitude of court respecting activity of local officials—Selectmen, Distribution of religious avails, Making of leases

TABLE OF CONTENTS

v

Chapter	PAGE
—Listers, No lease land cases in <i>Reports</i> , Discretionary power, Influence of listing law. Trusts. Public use. Tax exemption. Cases before United States Supreme Court: Town of Pawlet v. Daniel Clark, <i>et al.</i> ; Society for the Propagation of the Gospel v. New Haven and Wheeler; Society for the Propagation of the Gospel v. Town of Pawlet and Ozias Clarke.	179

VI. THE LEASE LANDS AND THE LEGISLATURE

Introduction: Description of Appendix B; Arrangement of material. Leases. Conveyancing. New York-New Hampshire controversy. Statutes of limitation. Betterments acts. Easements. Proprietors' Doings: Town organization. Eminent Domain. Ejectment. Town line problems. County lines. Gores (Unorganized areas). Local officers: School laws. State tax acts: Early state revenue system; County tax acts; Listers' laws. Tax exemption: Special legislation; Legislative inconsistencies; Local government reporting. The University: Other institutions; Basic acts; Reorganization. The Society for the Propagation of the Gospel in Foreign Parts (S.P.G.). County grammar schools: Nature of the compilation; Character of legislation—Illustrations, Orleans County—Variations; Diversion of lands to public schools. Town schools: Nature of the compilation; Character of legislation; Early period; School organization; Unorganized areas; Lease land legislation distinguished; Recent legislation. The "Gospel" right: Eighteenth century legislation; First administrative act—Changes; Unorganized areas; Church incorporation. The glebe. First settled minister's right. General comments.	225
--	-----

VII. ADMINISTRATION OF THE LEASE LANDS

Introduction: Scope of available data; Procedure for the analysis; Lands in relation to centralized administration. The University lands: Facilities for land administration; Land records; Investigation of Mr. H. M. MacFarland; Income; MacFarland report of land status and leases; Litigation. S.P.G. lands: Quantity; Income and accounting; Character of administration; Early conditions and history; System of administration—Early failure of administration—Later failure; Legal status; Litigation. Grammar school lands: Failure of original purpose of grants; Original plan for location of schools and distribution of avails; First disposition of lands; The change in the plan; Development of secondary school movement; Legislative failure to supervise the trusts; Land administration by the schools; Diversion of grammar school rights; Financial aspect; Early influence of the right on establishment of schools; Criticisms of the system; Reports to the legislature on acreage and income; Report of the Educational Commission; Litigation. Town lands: Condition of records data; Town reports—Lease land data; Evaluation of administration—Earlier conditions—Influence of system of school administration; Litiga-	
--	--

Chapter

PAGE

tion; Conclusions. First settled minister lands: Distinctive features of this right; Disposition of the lots; Evaluation of the right; Legal problems and litigation. General evaluation of administration: Role of grantees, judiciary, legislature; Role of the state administration.	265
---	-----

VIII. CONCLUSIONS

General criticisms of the lease land system. The lands as a subsidy: Justification for the original grants; Evaluation of the system erected on the grants; Principal beneficiaries of the system; Relation of lease rents to taxes; Problem of forest land; Extreme disparities between property value and lease rents; Inequities of tax revenue. Factors inhibiting good administration. The lease lands as a continuing public problem: Effect of the act of 1937; Latest legislative activity—Bill of 1945—Attorney-General's opinion. Proposed solutions of the lease land problem: Possibility of taxing lease lands—Herrick v. Randolph—Morgan v. Cree—State v. Clement National Bank—Piper v. Meredith—Wells v. Savannah—Listing law; Change respecting statute of limitation; Other proposed changes not recommended—State administration of lease lands—State supervision.	315
---	-----

BIBLIOGRAPHY	329
------------------------	-----

APPENDICES

A. Town Charters in Which the Reservations Do Not Conform to the Normal Pattern	361
B. Legislation Relevant to the Lease Lands	363
C. Critique of Dissenting Opinion in <i>University of Vermont v. Ward</i> , 104 Vt. 239 (1932)	397
D. Exhibit of Circumstances in Bethel Illustrative of Conditions Confronting Administrators of Lease Lands	401
E. "Joint Resolution Relating to the Changing the Name of the Township of Fullum to the Town of Dummerston and Legalizing Certain Acts and Proceedings of Said Town of Dummerston"	403
F. "A Letter to the Thetford People"	405
G. Report to the Legislature of 1878 on Acreage and Rentals of Lease Lands	407
H. Report to the Legislature of 1882 on Acreage and Rentals of Lease Lands	423
I. Map Depicting Areas Embraced in Wentworth Grants and Those Covered by Vermont Grants	439

INDEX	441
-----------------	-----

PREFACE

A word of explanation is offered here as to why such a topic should have been made the subject of an extensive research. The study was undertaken because so little has been known, at least in an integrated way, of the lease land system in Vermont—so little, in fact, that the place of the system in the state has not been appreciated, even in Vermont.

My first encounter with the subject occurred shortly after my arrival in Vermont in 1937. In the course of a conversation, concerning governmental practices in the state, with Mr. Arthur J. Barry, then municipal manager at Middlebury, he mentioned the “glebe lands.” This pricked my curiosity, the term being new to me. On questioning him further about them, he told me that he had had occasion, as assistant city engineer of Burlington, Vermont, to investigate them in that jurisdiction in an attempt to straighten out certain taxation problems. This was the extent of his knowledge, although he went on to say that he was running up against such lands in Middlebury. He then referred me to several other people.

Since then, from time to time, I met the “glebes” in other places, both in conversations and in writings, but never in any conclusive way. I also made occasional positive efforts, as time allowed, to discover more about them. But, in every instance, what I found to be true is that the “information” is fragmentary and often incorrect. Here and there one talks with an individual who knows a great deal—about some one limited aspect of the lands. One finds references, documentary or secondary, which give a fairly good picture of a single facet of the system. An example of such limitations in documentary materials is the reports of cases in the Vermont and the United States supreme courts. These reports have been found to be ample within the area of the issue in dispute in each case. But there they stop, of course. In the secondary materials, one discovers frequent references to the lands, but only incidental to some other study at hand. Even the terminology of the subject is obscure, as is to be explained later.

The final impetus to make the study occurred in the annual Middlebury town meeting of 1940. At that meeting a prominent citizen of the community, much interested in civic affairs, reported a voluntary study which she had conducted on the matter of lands in the town which were sequestered from taxation. Her figures included classes of lands additional to those investigated herein, and she was much concerned over the possible effect of tax exemptions on the public revenues of the town and on the tax burden of non-exempt lands. This, together with my previous contacts with the subject, made me feel that there was a real justification for an investigation which might result in presenting an integrated picture of the so-called lease land system in Vermont.

Since the study was embarked on, this view has been confirmed in several directions. There was, among state officials and others in a position to be aware of the system, a high degree of enthusiasm that the study was being made and a unanimity of feeling that it would be advantageous to the state. The system embraces a much wider group of lands and institutions than would be realized from a cursory knowledge. I have found various points at which this study ties in with other problems of government in Vermont and can be useful in their analysis. I have found that the course of development of the system is rather typical of the process of political development, generally, in the state. And I have come to feel that this subject provides an excellent opportunity for demonstrating that political problems or situations can exist on the sufferance of lack of adequate information respecting them.

It may well be true that the lands in Vermont under consideration in the present study can be regarded as a minor problem relative to many that we face. But there are many such "minor" problems, which, added together, contribute heavily to our political difficulties. And the very fact of their relatively small proportions, individually, leads us away from them. An analogous situation is to be found in medical research in which large sums are provided and used with great enthusiasm and energy in the study of the major ailments of humanity. And much good has come therefrom. But the doctors have done little, and apparently can be little excited, about those many small disabilities which afflict us and which are quite capable of making the extended life span which they have given us far from happy.

The study is considered as an introduction because it has been found, as a result of the research, that no more could be hoped for without extensive resources of time, money and specialized expert services. There

is a definite place for an introduction to the lease lands as a political institution; it can serve the very useful role of providing an orientation and point of departure, now completely lacking, for more detailed research by those immediately concerned with the lands.

The immediate purpose of the research was to accomplish a doctoral dissertation and the study has been thus submitted at Stanford University. However, the conditions unveiled during the research, which have been remarked on above and about which more will be said later, soon convinced me that both the direction of the research and the scheme of writing should be devised not only to produce a satisfactory academic dissertation. They should also provide a study which could be of use in Vermont toward a better understanding of the lease land system and toward possible improvements in its contribution to public affairs in the state. Some revision has been made herein to accommodate the somewhat different technical writing requirements of an academic presentation and a book for general circulation, but the substance remains untouched.

I wish to express my appreciation of the interest in, and support of, this publication by the Legislature and the Curators of the Vermont Historical Society. My wish that the study may be useful to Vermont could not be realized without their joint determination to subsidize the publishing of this edition. I cannot hope to name all those people who aided me in the study with their interest in it, their time and their information, and to whom I am deeply appreciative. The list of interviews in the bibliography will show how many contributed in one way or another. I can, however, say that no researcher probably ever was received and assisted in a more friendly, courteous and helpful manner than I enjoyed throughout the period of the work of accumulating the information from which this study was written.

WALTER T. BOGART

Weybridge, Vt.

Chapter I

INTRODUCTION

This study is concerned with certain land grants in the State of Vermont, popularly known as the "lease lands." They are grants devoted, as the local phrase goes, to "public, pious and charitable use," and they are widely distributed throughout the state. In fact, there are but few of the approximately 250 towns in the state which do not contain some of the lands, and these few towns in each instance present some special historical peculiarity. So it may be said that the lease lands form a normal part of the pattern of political institutions of the state.

They have a place in studies in political science for several reasons: they originated at the desire, and by the grant, of the governing authority; they are spoken of and regarded as public rights, or public lands; their purpose was to aid in the development of religious observances and of education and thereby to provide an incentive toward the settlement of the area; certain of the lands are administered by public authorities, and all of them have been the intermittent subject of legislation; they are tax-exempt lands; and in the last respect they are frequent cause for concern in the local jurisdictions of government as to the effect on the tax rate of non-exempt land.

The origin of the lease lands is found in the charters of the towns, explicitly provided in each instance of a town grant, with the few exceptions previously noted. There are altogether nine classes or groups of lease lands. For a first consideration of them they are readily classified by grants made prior to the Revolutionary War and those made by the state government after the establishment of Vermont as a separate jurisdiction.

The towns antedating the Revolution comprise the so-called New Hampshire, or Hampshire, Grants, which appear in historical studies of New England and in numerous historical novels. They were granted, and the charters issued, by Governor Benning Wentworth of the Province of New Hampshire, and in Vermont they are customarily referred to as "Wentworth towns." In all of his charters, which embraced the

usual six square miles of land, there were provisions for certain public shares of land to be set aside. In a few such towns less than the customary shares were provided, but in the great mass of his charters there is what may be considered a standard pattern. This pattern provided for four public shares of lands, namely: one for a glebe for the Church of England; one for the Society for the Propagation of the Gospel in Foreign Parts¹; one for the first settled minister of the Gospel; and one for the benefit of a school in the town.²

Following the Revolution, the people in the Grants established themselves as a separate political entity which ultimately became Vermont, the fourteenth state of the Union. The government of Vermont proceeded with little delay to issue charters for town grants for that portion of the state not included in the Wentworth towns. These charters continued the practice of specifying shares of land for public rights, the only changes in procedure being the number of public rights per town and the beneficiaries designated for them. In the "Vermont towns," as they are commonly called, there was a specification of five, instead of the earlier four, public shares in the standard pattern of these charters. Here again, a small minority of town charters shows variations from the standard pattern, failing to include some one or more of the usual five. Some unusually small grants, ordinarily granted as "gores" rather than towns, leave out the public shares entirely. There was, however, a standard pattern of five such shares in the great majority of the Vermont

1. Hereafter referred to as the S. P. G. This abbreviation has for many decades been customary in Vermont. So much so, that various people who have occasion to speak of the S. P. G. lots do not know the full title of which these letters are a symbol.

2. The Wentworth charters also provided for a piece of land for the governor himself. With few exceptions, this was specified as amounting to 500 acres (although in about a half-dozen instances he called for 800 acres, and in two towns he was content with 400 acres). In almost all cases, he also specified the location of his acreage, generally in the corner of the town, so arranged that it abutted on his reserved acreage in adjoining towns. The charters specify that this personal reservation shall be accounted as two shares (in the 800 acre towns, three shares). This present study does not include the "BW" shares, as they were called. The only point in common between them and the lease lands was that they were all specified in the charters. The BW shares were not public rights but were distinctly private rights for the personal benefit of the worthy governor. They have disappeared into the mass of the privately owned land of the state, having suffered a variety of fates. The only comment of consequence to be made of them is that there is no indication that Benning Wentworth ever profited from them to any important extent. Thus they may be dismissed.

towns. These were: one right for the use of a seminary or college³; one for the use of county grammar schools in the state; one for the first settled minister (or ministers); one for the social worship of God; and one for the support of an English school (or schools) in the town.

These, then, are the "lease lands" of Vermont—the four groups provided for by Benning Wentworth, and the five groups authorized by the State of Vermont.

These lands are mentioned briefly, in one connection or another, in numerous writings about Vermont. Such is almost inevitable since the lands are an integral part of the history of the region. It has been discovered, however, that such statements are not infrequently incorrect in one or another respect. The only writing which constitutes in any way a systematic consideration of the lands is an article by L. D. Clarke. The title of this is "Vermont Lands of the Society for the Propagation of the Gospel,"⁴ and its writing was apparently occasioned by the transfer of title of this group of lands in 1927 to the Episcopal Diocese in Vermont. For the most part it is correct. But it is brief and is no more than a summary. Furthermore, it covers but one of the groups of lands. Miss F. M. Woodard necessarily discusses the lands, but only incidentally, because her focus of interest was the proprietors and land speculation; similarly with E. D. Andrews' study of secondary schools.⁵ There has not been any general systematic study made of the lands as a political institution of the state.

Indeed, the obscurity is so complete that its effects were apparent in the first stages of this study. Although numerous contacts had been made with the lands, as has been explained in the Preface, the writer was so ill-informed by those with whom he had talked that his first tentative outline of the study used the word "glebe" as applying to all the lands under discussion. It was not until some little progress had been made that this inadequacy was appreciated. The first phases of the research may, in fact, be thought of as groping blindly for bits and pieces.

3. The University of Vermont became the sole beneficiary of these lots. Throughout this work the word "University" refers to the University of Vermont, as does the term "College" lots or lands.

4. In *The New England Quarterly*, III (1930), 279-296. Hereafter cited as Clarke, "Vermont Lands."

5. Florence M. Woodard, *The Town Proprietors in Vermont* (New York, 1936). Hereafter cited as Woodard, *Town Proprietors*. Edward D. Andrews, "The County Grammar Schools and Academies of Vermont," *Proceedings of the Vermont Historical Society*, New Series, IV, No. 3 (1936). Hereafter cited as Andrews, "Grammar Schools."

The beginnings were entirely by interviews, mainly with "old-timers" whose local lore included some awareness of such lands. One such individual would lead to another who was thought to know something additional. This procedure accomplished two results. On the one hand, it increased the number and variety of the fragments in the writer's possession, expanding unevenly the area of the subject of which he was aware. On the other hand, it tended to increase the confusion out of which he was attempting to define the study. The start had been with the impression that there were a group of sequestered "glebe lands." Now, hints and suggestions developed that the lands of interest to the study fell into several groups and, also, that their relation to the community was not uniform. It was only by a close familiarity with the town charters that at least the number and nature of the groups of lands came to be known. Attempts were made to obtain information more solid and authoritative than the tales of the old-timers. This was unsuccessful at the beginning due to the terminological confusions existing. The public documents used terms different from those in customary practice—so different that for a time they passed unrecognized; so different that the process of becoming acquainted with the documentary materials was slow and arduous and required much trial and error, and only a gradual building up of confidence. Indeed, it has been found necessary in the case of the state legislation to go through the many volumes of the laws page by page, scanning the acts for relevancy of contents for this study. Neither the indices nor the titles of the acts have been found at all trustworthy as an indication of applicability.

A second outline of the study was developed in the light of what was regarded then as a recognition of the limits of the problem. This, like its predecessor, has been entirely discarded. At the time of this second definition of the study, the writer was acquainted with the several classes of the lands, knew their source and intent, was aware of the nature of the documentary material to be searched for, and had established the location of important segments of such material. It was proposed to present a complete study of the lands, to the last individual parcel, and to consider in substantial detail their fiscal aspects in relation to taxation in the state. This, it will be recalled, was the first basis of awareness of the lands—the concern in the towns about lands sequestered from taxation. It was planned to show just what effect sequestration had had so far as these particular lands are involved. This, of course, meant

that the various lots in each town would be analyzed, and plans were laid to that end.

First, it was discovered that the state offices would be valueless for such a plan. The Secretary of State, Rawson C. Myrick, informed the writer, with some regret at being unable to assist him, that "there are practically no records of the lands in the state offices." The Department of Education had no data on those lands allotted for the benefit of education. The office of the Commissioner of Taxes had data derived from the quadrennial assessment reports and other papers, but the Commissioner was emphatic in his comments that these would be of no value to this study. (These individuals were among those who expressed satisfaction that a study of the lands was to be undertaken.) Failing in this, it was proposed to secure information from the town clerks by use of a questionnaire. A form was prepared which would elicit the basic data respecting the various lots. It was thought that such a questionnaire would provide a point of departure from which its contents could be readily checked and compared and which would provide uniform information for a comparison of town conditions. This procedure was abandoned due to the pessimistic persuasions of the state officials, particularly those in the tax and education offices. They said that the town clerks would not be of help on a questionnaire. They showed instances in which they, in their official capacity, had tried questionnaires to the towns, with uniformly disappointing results. Too many towns failed even to return the questionnaire, and in too many returns the replies were of dubious quality. It was found later on that this is a long-standing characteristic of Vermont. Early efforts to clarify town lines were impeded by the failure of some towns to submit their charters for inspection.⁶ In at least one instance the legislature considered refusing

6. In 1779 the Vermont General Assembly directed the Surveyor General to collect and record in his office all charters granted by Massachusetts, New Hampshire, or New York and in 1780 resolved to declare lands vacant whose charters were not received within a year. Vermont, Secretary of State, *State Papers of Vermont. Assembly Journals and Proceedings, 1778-1791* (Bellows Falls, 1924), III, pt. I, 88, 150. Hereafter cited as *Vermont State Papers*. In 1809 the legislature requested the Surveyor General to collect and organize data on town lines because no proper state office had any record of the New Hampshire charters. *Laws of Vermont, 1808-1810*, 1809, pp. 62-63. An 1830 effort to clarify the New Hampshire-Vermont boundary line was frustrated because the state government was unable to secure charters from the towns along the river. In the Supreme Court of the United States (October Term, 1932), No. —, Original. *The State of Vermont v. the State of New Hampshire. Report of the Special Master*, in Chancery [Edmund F. Traub], pp. 167, 195; Finding 301, p. 410. Hereafter cited as *Special Master*. As late

to seat town representatives until their towns should have complied with certain requests for information.

The next thought was that, while it would involve considerable travel and time, it would be well to visit each town in turn and secure the desired information from the land title and tax records. Several towns were visited, without much success. Land records simply did not exist in most towns in any such form. Finally, the writer had the good fortune to be invited to accompany the land agent of one of the beneficiaries. He visited several towns during an excursion devoted to an attempt to determine the status of certain lots to which his principal was entitled. He was a man well-experienced in the task as he had been an active land agent for some years and was, moreover, a native of the state, thoroughly familiar with the ways of town clerks and treasurers. Partial or complete defeat met him in some instances. Nothing short of a complete study of all town records, supplemented by other information such as bank mortgage records, by a qualified land attorney, with the additional services of a surveyor, could have dissolved the veil of uncertainty obscuring some of the lots for which he was searching. The following letter was received from him shortly thereafter and indicates the lack of clarity respecting one of his searches:

Monday Sept. 9th '40

Mr. Walter T. Bogart
Middlebury Vt

Dear Walter

I wish to thank you for doing so well for Fee and me last week in the way of lunch and incidentally to let you know that our worrying friend Leon V. Chapman in West Rutland need not worry over the lot paid for by C. A. Bloomer. The Ballard lot has been leased since 1838 whereas the Bloomer lot seems to have been discovered by itself as late as 1870 by an attorney working

as 1852, the legislature again directed acquisition of the New Hampshire charters by the Secretary of State. *Laws of Vermont, 1852-1854*, 1852, p. 54. In 1900 a Joint Resolution of the legislature stated:

Whereas, It appears that the first nine volumes of the Surveyor General's papers, containing the original surveys of the several towns in this State, through some lamentable misfortune have been lost to the State, and are now in the possession of the State of New York, and as the said papers, or copies thereof ought to be reasonably accessible to the people of this State. . . .

the Governor was directed to procure copies of the papers or the original volumes. *Laws of Vermont*, 1900, p. 386. See also, "Address of the Council of Censors," *Vermont State Papers*, comp. by William Slade, Jr. (Middlebury, 1823), pp. 534-535. Hereafter cited as Slade, *State Papers*.

for the Society in that area something as I have been working over the whole state.

Very truly yours
(signed) Joe Wilson

(over)

Of course the fact that the Bloomer \$3 lot seems to have been discovered by a lawyer in 1870 and leased to himself in payment for his services is not proof that it is not part of the irregular lot claimed by Ballard and Chapman, Joel Howe claimed the present Bloomer lot in 1886 and had a perpetual lease made to himself with no rent during his life but he had held the lot for some time before getting the lease

(signed) J. F. W.⁷

And so it was realized that the study must again be defined. It still existed as a problem and as a topic for study. But on terms different from those previously conceived. The lands exist as a political phenomenon, and it now appeared that their very obscurity comprised the definitive aspect of them as a subject for this study. This was the approach which could be of most value in an introductory presentation of the lease lands. To present a perspective picture of the lands as an element of Vermont political organization and then to make apparent the condition of confusion and obscurity now surrounding them would be of service to those in the state who would have occasion to delve deeper into any particular land problems.⁸ There is a practical "every-day" place in Vermont for such an analysis of the lease land system. The following letters are submitted in substantiation of the assertions just made. They illustrate both the extreme lack of knowledge in the state regarding the lands and the point that, in various ways, more knowledge is needed. The originals of the letters are on file. The identification of the writers has been omitted here because of the possibility of causing them embarrassment. The first of the letters was written by a relatively prominent Episcopal clergyman, the second by a member of an important law firm:

Professor Walter Bogart
Middlebury College
Middlebury, Vt

October 28 1940

My dear Professor Bogart:

Mr. Joseph Wilson, of Montpelier, has suggested to me that you might be able to help me in getting some data in regard to

7. Original of letter in the writer's files.

8. The process of definition of this study has been described at such length because it, in itself, illustrates the general condition of lease land affairs.

the Land Grants of the Society for the Propagation of the Gospel in Foreign Parts as they stand and are administered at the present time by the Diocese.

I am writing a history of [] and I have also written a history of the Parish Glebe Lands and the Diocesan Land Grants of the S. P. G. taking the subject up to 1920. I am quite sure that the Diocese has made some changes in regard to the Lands since then and I am hoping you can give me some light on this subject. What I would like definitely to know is:

How many acres of such lands there are in each town?

How much income the Diocese receives from them?

When the transfer was made by the S. P. G. to the Diocese and how much authority is given to the Board of Land Agents.

I have I believe the record of the long litigations but the present status of the workings and the administration of the Land Grants is somewhat hazy to me.

I would be greatly obliged if you could enlighten me on some of these points

Yours Very Sincerely
[]

January 7, 1941

Professor W. T. Bogart
Middlebury, Vermont

My dear Professor Bogart:

Mr. Conant, our State Librarian, tells me that you have been making a special study of our public lands.

The Congregational Church has for many years received annual rents from three farmers. The church is now being dissolved and all its property turned over to the Vermont Congregational Conference, etc., under P. L. 2644-2652. Question arises whether these annual rents should pass to the Conference or perhaps remain in the town of [] for the benefit of other churches in the town.

For two reasons it seems that the [] church can not own these lands in fee:

First, the lands are exempt from taxes and only church buildings and parsonages are exempt. P. L. 590, 592.

Second, Mr [] the town clerk, has made extended search and can find no conveyance of these lands to the church.

Therefore, I suspected these lands are public grants of the town charter. You will know that in our town charters granted by our legislature there were grants for "the ministry and social worship of God forever." See Williams v. North Hero 46 Vt. 301, 319; and Williams vs. Goddard 8 Vt. 492. But the [] town charter is a Gov. Benning Wentworth charter, and the foregoing grant does not appear in his charters, all of which were of

the same form. See Thompson's Vermont Part II, page 224. The following public grants appear in the Gov. B. W. town charters ;

(1). Grant to the first settled minister. But that grant went to the first settled minister in fee. (North Hero case, *supra*), and therefore the church could only get same by deed of the minister which would appear on the land records and the land would be taxable.

(2). The Glebe lands granted to the Church of England were given to the town for support of schools (Nos. 2 and 7 of Ch. XXV of Slade's Laws).

(3). Following the Revolution the grants to the propagation society were given by our legislature to the towns for support of schools (Nos. 1 and 9 of Ch. XXV of Slade's Laws), and upon this latter act being held unconstitutional by the courts, these grants were turned over to our Episcopal Church.

So how could the lands of the [] Church have arisen out of any of the public grants?

Can you give us any suggestions which might enlighten our darkness? We would greatly appreciate your kindness.

Cordially and sincerely yours,
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Letters have also been read which were addressed to land agents from tenants and from town clerks asking for information and explanation of the status of some of these lands. Such letters from tenants are apt to waken no little sympathy in the reader. One farmer, for example, had seen the proprietors' records of his town and discovered thereby that a portion of his farm was made up of land which the records indicated belonged to the S. P. G. He had thought he owned all of his land and was bewildered. By considerable inquiry he heard of this land agent as being in some manner connected with the situation, and he was hopeful that the agent could and would help him figure out the situation and what his status was on his farm.

Not the least of the confusion surrounding the lands is the matter of terminology—a designation for them which is definitive and which might serve as a common medium of thought among the people of the state. It has already been pointed out that this constituted one of the early obstacles in this study. Although the problem was gradually solved for purposes of research by becoming familiar with the various terms in use, no satisfactory solution occurred insofar as a title for the study is involved. The present title was finally adopted because it at least has the merit of applying more strictly to these lands than any other title available and because it is in relatively common use among Vermonters.

It is not altogether satisfactory because it fails of certain proper functions of a name, especially in that it carries no suggestion of the purpose of the lands. But for want of any other designation as distinctive as this, the term "lease lands" was adopted for the title and for use in the study.

As has been stated, the first contact with the lands was through the term "glebe." Since then several other terms have been encountered. These are lease lands, public shares, public lands, public rights, sequestered lands, and lands devoted to public, pious and charitable use. The use of the term "glebe" is found mostly among townspeople, the "neighborhood phrase," so to speak. However, it occasionally appears at the state capitol.⁹ In the charters of the towns granted by Benning Wentworth, it appears in its traditional use as referring to a lot of land for the benefit of a church—in this instance the Church of England.¹⁰ "Lease lands," on the other hand, is equally a phrase in common or

9. *Public Laws of Vermont* (1933), ch. 33, sec. 592; ch. 145, sec. 3374; ch. 146, sec. 3536. Hereafter cited as *P. L.* The Vermont Supreme Court, in *St. Albans Hospital v. Town of Enosburg*, 96 Vt. 389, 392 (1923), noted the use of "glebe" as a term in *General Laws* (1917), sec. 687.

10. In ecclesiastical law, a glebe was "the land belonging, or yielding revenue, to a parish church or ecclesiastical benefice." *Webster's New International Dictionary*, 2d ed., copr. 1934, 1935, 1945, by G. & C. Merriam Co. (Springfield, 1936), p. 1063. Justice Story, in *Pawlet v. Clark*, 9 Cranch 292, 330, 334 (1815), gives a more complete interpretation of the glebe in English and American usage:

No parish church, as such, could have a legal existence until consecration, and consecration was expressly inhibited unless upon a suitable endowment of land This endowment was in ancient times commonly made by an allotment of manse and 'glebe,' by the lord of the manor, who thereupon became the patron of the church. Other persons also at the time of consecration often contributed small portions of ground, which is the reason, we are told, why, in England, in many parishes, the glebe is not only distant from the manor but lies in remote, divided parcels Whenever . . . within the province, previous to the Revolution, an Episcopal church was duly erected by the crown, in any town, the parson thereof regularly inducted had a right to the glebe in perpetual succession. Where no such church was duly erected by the crown, the glebe remained an *haereditas jacens*, and the state, which succeeded to the rights of the crown, might, with the assent of the town, alien or encumber it, or might erect an Episcopal church therein, and collate, either directly, or through the vote of the town, indirectly, its parson, who would thereby become seised of the glebe *jure ecclesiae* and be a corporation capable of transmitting the inheritance.

A further definition found in Benjamin V. Abbott's *Dictionary of Terms and Phrases Used in American or English Jurisprudence* (Boston, 1879), I, 535, is as follows:

The land of which a rector or vicar is seised in right of the church We most commonly . . . take it for land belonging to a parish church, besides the tithe. It is, in fact, a portion of land attached to a benefice as part of its endowment.

customary use among those around the state capitol and among those immediately concerned with some of the groups of lands. "Public shares" is a term found in some of the town charters and in other early papers. The next three terms, "public lands," "public rights" and "sequestered lands," are those customarily encountered in public documents such as legislative acts and the decisions of the courts. The latter, "sequestered lands," is found in legislation dealing with lands of various sorts which happen to be exempt from taxation and with which the lease lands are at times bracketed. "Lands devoted to public, pious and charitable use" was found in some of the town charters and since then may be encountered at times in legislative acts and other documents. As it is used in later times, it has much the same omnibus quality as "sequestered lands."

A perusal of this list of terms will show that none of them is entirely satisfactory. The "glebe," both in its accepted use and in the Wentworth charters, is proper only for one of the groups. "Lease lands" fails entirely to signify anything about the lands other than the mode of their disposal. All of the remainder of the list of terms fails to distinguish these lands specifically granted in the town charters from other quite dissimilar lands. For example, these lands are exempt from taxation; whereas, certain other lands in the state devoted to "public, pious and charitable use" are subject to taxation.¹¹ "Lease lands" has the single virtue that it alone is comprehensive enough, as used, to embrace all of the lands granted in the charters and at the same time distinguish as between these lands and other types or classes of special land holdings.¹² Admittedly, the term "lease lands" is unsatisfactory in that it

11. *P. L.*, ch. 33, secs. 590, 592.

12. Even this term is not always reliably used. In the 1946 legislative commission report on forest taxation the term includes lands held by Middlebury and Dartmouth Colleges. These holdings are quite distinct in certain characteristics from those commonly called "lease lands." The same report also contains an illuminating instance of the use of the word "glebe." Therein it is applied to the share for the social worship of God. Normally, in Vermont, as previously indicated, "glebe" refers either to all of the lease lands indiscriminately, or to the original glebe grant in the Wentworth charters which was confiscated for the use of schools. Vermont, *Report of the Commission on Forest Taxation* (Montpelier, 1946), p. 7. Hereafter cited as *Forest Taxation*. Another illustration is in a report made to Middlebury College. That institution holds extensive acreages in Vermont. In an effort to clarify the status of its lands, the college undertook a study of the matter. The report was submitted by R. L. Rowland in 1931. The title is, "Middlebury College Lease Lands." That institution is not the beneficiary of any of those lands customarily and properly embraced in the term.

does not describe to the uninitiated some of the most important characteristics of this system of land grants. No adequate term exists.

It has been explained that an acquaintance with the town charters was the step in this research by which the true nature of the lease lands was first made clear. From this, it was a reasonable assumption that a detailed cataloguing of the towns, and the land provisions in the charter of each of them, would provide a firm point of departure for establishing the total acreage of the authorized lease lands. It was further assumed that the charter provisions, in conjunction with the records of the proprietors as to land divisions, would establish the total acreage, the number of lots, or parcels, of land and their distribution throughout the state. However, this proved to be anything but true.

Even the exact number of towns chartered was elusive and developed much the same uncertainty as had characterized the problem of nomenclature for the lands. Not only do the written accounts vary respecting the number of towns granted, but the extremes are far apart. The following figures have been encountered at one place or another with reference to the number of charters granted prior to the Revolution: 126, 127, 128, 129, 136, 137, 138, 144, 146, and 148. Some of these figures should be identified in order to give a more complete appreciation of the degree of uncertainty existing. The low figure, 126, is found in the power of attorney given by the S. P. G. to the Trustees for the Diocese in 1816.¹³ Matt Jones prefers the figure 128 (although in a later passage of his book, he casually speaks of 129).¹⁴ He relied on the material available in the *New Hampshire State Papers*. The preface to this collection uses the phrase "not less than 129."¹⁵ Jones' reason for using 128 is that a duplication existed in that the charter of Dunbar granted in 1764 was for the same area of land previously granted in 1763 under the name of Sudbury, the former grant having lapsed through inactivity of its proprietors.¹⁶ In 1927, when the S. P. G. lands were finally transferred to the Diocese, the latter sent notices of this change to 137 towns presumed to have such lands.¹⁷ Mr. Samuel Williams, in his *Natural and*

13. C. R. Batchelder, comp., *The Documentary History of the Protestant Episcopal Church in the Diocese of Vermont* (New York, 1870), p. 147. Hereafter cited as *Doc. Hist.*

14. Matt B. Jones, *Vermont in the Making 1750-1777* (Cambridge, 1939), pp. 42, 130, App. G. Hereafter cited as Jones.

15. Albert S. Batchellor, ed., *State Papers, New Hampshire* (Concord, 1895), XXVI, vi. Hereafter cited as *N. H. S. P.*

16. Jones, *op. cit.*, App. G., n.

17. Papers of the Treasurer of the Land Agents of the Episcopal Diocese of Vermont.

Civil History of Vermont,¹⁸ asserts that there were 138 towns, as does the *Documentary History of the Diocese*.¹⁹ Mr. George G. Bush in his *History of Education in Vermont* likewise uses this figure.²⁰ The figure 144 is to be found in "The Declaration and Petition of the Inhabitants of the New-Hampshire Grants, to Congress, announcing the District to be a Free and Independent State," in Slade's *State Papers*,²¹ and this figure was being utilized by that section of the Vermont Works Progress Administration Historical Records Survey which was attempting to produce a series of correct town maps of the state. In the proceedings in *Vermont v. New Hampshire*, 289 U. S. 93 (1932), the figure 144 was generally utilized, although Vermont's bill of complaint recited 146.²² Finding 97, p. 280 of *Special Master* speaks of 136. Mr. Trabue resorted to saying, "about 144 towns."²³ It will be noticed at once that the most interesting point is the great disparity in the figures offered by the New Hampshire and Vermont collections of state papers. It is remarked in passing that the British Board of Trade and Privy Council were no more certain of the number of Wentworth's charters. Two students of Vermont history acceded to the bewildering conditions. Woodard remarks that: "The exact number of the S. P. G. grants made by [Wentworth] is not known"²⁴ And Clarke says, "There is considerable uncertainty as to the exact number of towns Wentworth chartered to contain grants to the S. P. G."²⁵

Various factors have contributed to this lack of certainty. Wentworth's land granting activity was not one which would lead him to keep accurate records nor to give it much publicity; so we do not find a clear-cut record of the charters, but rather a compilation made from fragmentary records. His activity extended over a long number of years, interrupted by the period of the French War, so that it is not to be expected that his clerical and administrative personnel at Portsmouth was continuous. Over the years, town charters were in some instances renewed by him and also re-granted, the latter act sometimes being ac-

18. Samuel Williams, *The Natural and Civil History of Vermont* (Burlington, 1809), 2nd ed., II, 14.

19. *Doc. Hist.*, p. 6.

20. George G. Bush, *et al.*, *History of Education in Vermont*, no. 29 in United States Bureau of Education Circular of Information no. 4, 1900 (Washington, 1900), p. 52.

21. Slade, *State Papers*, p. 70.

22. *Special Master*, p. 9.

23. *Ibid.*, p. 92.

24. Woodard, *Town Proprietors*, p. 52.

25. Clarke, "Vermont Lands," p. 281.

accompanied by a change in the name of the town, and the classification of such over-lying charters by various writers has no doubt been a source of disagreement as to the total. The confirmation of some of these charters by the New York government, involving in some instances a change in the proprietors concerned, could add to the confusion. In this connection, it is worth noting that some of these charters are not even to be found in Vermont, but are deposited in the archives of New York.²⁶ The New York authorities required that the Wentworth charters be surrendered for the issuance of a New York confirming charter. The many changes in town lines which have been directed by the legislature since the establishment of the state, in some instances involving the creation of new towns, have further obscured the early grants.²⁷ This is especially significant for a study of the lease lands because some such town line changes will have shifted parcels of lease lands from one town to another.

A comparison of the various materials available has led to the conclusion that the most nearly reliable and useful position is that adopted by Matt Jones. The list of towns found in the New Hampshire *State Papers*, as modified by him, was adopted for this study.

The post revolutionary, or "Vermont towns," offer a lesser degree of uncertainty but are not clear-cut by any means. Changes in town lines, with later grants partially or completely over-lying earlier towns, contribute to this. The legislature, just as Wentworth did, found it expedient in some cases to make re-grants.²⁸ And some adjustments respecting earlier New York land patents affect the picture. An example of this is the case of the Town of Whitingham, which is found to have no charter. The area was once called Cumberland Township, but no appar-

26. Stockbridge, Windsor, New Marlboro, Norwich, Fairfax, Somerset, Fulum, New Stamford, Stratton. This list is from unpublished research notes of Mrs. Mary G. Nye in the office of the Vermont Secretary of State.

27. Mr. Virgil L. McCarty, researcher of the town lines section of the Work Projects Administration Historical Records Survey, has made an extensive study of this situation. For an example see: Virgil L. McCarty, "Boundary Controversy. The Brownington-Johnson Land Problem," *Vermont Quarterly*, New Series, XV, No. 3 (1947), 157-176. See also *Corinth v. Newbury*, 13 Vt. 496 (1841), for history of the Newbury-Topsham line.

28. When Vermont declared her independence in 1777, four towns (Concord, Waterford, Norfolk, and Canaan) had no charters and were first chartered by Vermont in 1780-1782. Bradford (Mooretown) had possibly had a New York patent, but in 1788 the Vermont legislature changed its name from Mooretown to Bradford, and in 1791 appointed a committee to deed land to the settlers directly. *Special Master*, pp. 73, 74-75; *Finding 19*, pp. 236-238.

ent grant was made of the land until New York issued a patent in 1770, which resulted in establishment of the township of Whitingham.²⁹ The Vermont legislature never gave it a confirmatory charter (instead, it made several grants to individuals within the same town), but simply passed an act stating that land titles were to continue. Vernon is another town without a charter. Originally called Hinsdale, it embraced land on both sides of the Connecticut River and was granted successively by Massachusetts Bay, New Hampshire, the Indians and New York; its only charter even today is as a part of the town of Hinsdale, New Hampshire.³⁰

A further factor is that the state government made grants of land, accompanied by what give the appearance of charters, which are not to be regarded as towns. These grants were for the most part small in acreage relative to that of town grants and were generally to one or a very few grantees. Most of them were and are known either as "gores" or simply "grants." Some of them have since been absorbed into adjacent towns.³¹ Unfortunately for purposes of classification, there were some such grants which are difficult to distinguish from ordinary town grants due to the acreage involved, and this leads to variations in the estimates of the number of charters granted.

Another element of confusion respecting the distribution and location of lease lands may be noted here. The "gores" and "grants" have just been mentioned. In governmental organization in Vermont such areas are known as "unorganized places." In addition to these, though, some "towns" are also included in the "unorganized" category. These latter are areas covered by a full-fledged town charter but which lack town government because of a dearth of population. One such "town," for example, is completely lacking in settlement except for one person, and the entire area has been acquired by one man.

Governmental administration in the unorganized areas is accom-

29. Abby M. Hemenway, ed., *The Vermont Historical Gazetteer* (Brandon, 1891), V, pt. 2, 684-685. Hereafter cited as Hemenway.

30. *Vermont State Papers. Index to the Papers of the Surveyor-General* (Montpelier, 1918), I, 83. Hereafter cited as *Surveyor-General's Index. Special Master*, pp. 211, 212; Finding 13, pp. 234-235. Ira, likewise, has no charter. Here the origin of the town is so obscure that in the *Surveyor-General's Index*, p. 86, remarks about this town are punctuated with a question mark. The extent of information in Hemenway, III, 778, is simply to give the date of organization of the town as 1779.

31. Four remain: Avery's Gore, Warner's Gore and Warner's Grant in Essex County; and Avery's Gore in Franklin County.

plished through a Board of Supervisors, one such board operating for each county containing such areas. These boards represent the state government, and such public administration as exists in the unorganized places is carried on in the name of the state. Real property taxation is accomplished as follows: A board of three appraisers is appointed annually for each interested county by the state Commissioner of Taxes, with the approval of the Governor. The boards of appraisers make up the grand list and resulting tax bills for the unorganized land. These are transmitted to the Commissioner of Taxes for his approval. He in turn transmits them to the Board of Supervisors (appointed biennially by the Governor for each county), which collects the tax money and spends it for the benefit of the respective areas.³² The writer had an interview with Mr. C. M. Coffrin, the Deputy Commissioner of Taxes. Mr. Coffrin was, and had been for some years, on four of the five existing boards of appraisers. He stated categorically, in response to inquiry, that the unorganized areas included no lease lands. It was pointed out to him that both Glastonbury and Somerset had been chartered by Wentworth in 1761 and the charters provided the usual four public shares. His rejoinder was that neither of these towns has any record in the grand list book of any lease lands.³³

Using the same standard as that adopted by Matt Jones and by a classification of grants made by Vermont, as compiled in Slade's *State Papers*, the writer evolved totals respectively of 128 and 131 towns, or a grand total of 259 original town grants, eliminating such elements as renewals or re-grants. A current map of the state prepared and published by the State Development Commission shows a total of 243 towns,³⁴ to which may be added eight incorporated cities.³⁵ In some instances these cities would serve to replace earlier town organization, but in most instances the antedating town still exists. These figures are presented to show the extent to which original town identities may be lost completely. The figures do not, however, entirely illuminate the situation because they do not allow for changes in town names, or other incidents. For example, on today's map the towns of Peru and Land-

32. *P. L.*, ch. 147, secs. 3577-3585.

33. No evidence has been found that either of these towns has furnished any income from lease-rent to the Episcopal Diocese of Vermont for the S. P. G. shares.

34. Five of these are unorganized: Averill, Ferdinand, Glastonbury, Lewis and Somerset.

35. These figures agree with the mimeographed mailing list of local units of government prepared by the Vermont State Library.

grove are found in the south-central section of the state, but no town of Bromley is to be seen. There was, originally, a Wentworth grant of a town of Bromley. When Bromley's settlers located on the land, they actually settled on a gore between Bromley and Andover (Weston). This was caused partly by inadequate surveying and partly by the attraction of the superiority of that land. Later the error in location was disclosed, but the settlers wished to remain where they were. A separate, small-sized town was chartered to accommodate them, with the name of Landgrove.³⁶

All such situations and conditions have contributed to the present confused status of much of the lease lands and, likewise, illustrate the justification for the change made in the orientation of this study.

Another angle from which to regard the study as being of concern to Vermont is to consider the total land involved. At best no more than a rough approximation may be offered, but an estimate can be derived which will be of the proper general order and will serve to demonstrate the significance of the lease lands in the state. In order to be as conservative as possible, an average share has been estimated at 250 acres per town.³⁷ Taking account of the fact that the Wentworth towns provided four public shares and the Vermont towns five, somewhere between 280,000 and 300,000 acres were set aside for the use of the religious and educational beneficiaries designated; and, under the law, all of this is theoretically available for the original purpose. Figures vary somewhat as to the total land area of Vermont, due, no doubt, to the considerable number of lakes and rivers and the impingement, on the western border, of Lake Champlain. The various figures indicate that there are somewhere between 5,800,000 and 6,000,000 acres. Thus, approximately five percent of the land area of the state is affected by the provisions of the charters requiring lands to be reserved for the sev-

36. Hemenway (Burlington, 1867), I, 196-197.

37. Jones, p. 26, estimates shares in Wentworth towns at 340 to 380 acres each. R. C. Benton in his study, *Vermont Settlers and the New York Land Speculators* (Minneapolis, 1894), p. 18, suggests that each shareholder received from 300 to 350 acres. In the Matt B. Jones collection of photostatic copies of various public documents, deposited in the Vermont Historical Society Library, is a copy of a petition of some inhabitants west of the Connecticut River to Governor John Wentworth, dated October, 1769 (Library of Congress Division of MSS Papers of the Continental Congress. No. 40, vol. 1, folios 38-50), which states that the public shares were about 350 acres. The lower figure used herein is to account for small-sized towns and other irregularities. The Jones collection hereafter cited as Jones photostats.

eral public shares.³⁸ It is conceded at once that the actual acreage of lease lands is less than this because of various "losses" which have occurred and which will be considered fully later on. Such losses, however, are a significant aspect of the lease lands as a political institution, and the total remaining acreage is still an impressive portion of the state's area.

It is proposed in this study to consider the lease lands as a type of public subsidy, intended, like any subsidy, to aid the growth and development of the beneficiary of the subsidy, in this case religious observance or practice, and education. It is assumed that, while there was a general sort of interest in the welfare of these two elements of social activity, the primary purpose in providing such subsidy was as an added incentive to settlement and development of the region.³⁹

In other words, the lease lands will be herein regarded as an instrument for the implementing of public policy, the policy being the settlement of the region. The element of speculative interest in land, large as it looms in the early history of Vermont, is not of interest in this study *per se*. We will be concerned with it only as the speculators' way of doing business may have influenced the fate of the lease lands. Nor are we concerned, otherwise, with speculation as an underlying motivating influence in the desire to obtain settlers. The existence of a widespread official interest in settlement and development is assumed and

38. *Forest Taxation*, p. 8, asserts that originally 6½% of the land area was covered by these grants.

39. This view has been expressed by the Vermont Supreme Court in the case of *Dow v. Hinesburg*, 2 Aik. 18, 21 (1826) :

There is no room for doubt, but that the object of the government, in granting a right of land to the first settled minister . . . was to encourage a minister to settle, and preach the gospel among the people of such town, while the lands were uncultivated and the inhabitants few in number, and unable to contribute largely for the pecuniary support of a minister.

The New Hampshire court has been at least as explicit in holding the same assumption. In the case of *Baptist Society in Wilton v. Town of Wilton*, 2 N. H. 508, 510 (1822), the court said :

A general opinion seems to have prevailed in this state, that the lots reserved . . . for the ministry and for schools, were intended to aid the first inhabitants in educating their children, and in procuring religious instruction, and thus to induce individuals to become inhabitants.

And again, at p. 512 :

The first inhabitants of this country considered the settlement of ministers and the establishment of schools as matters of the highest importance. In general, those who first settled in the new townships were poor, and we have no doubt that these reservations were intended to aid those who went into the new towns

accepted as a major political policy both before and after the Revolution.

At this point, a word should be said with respect to the use herein of the term "political." It is used at all times in the sense of governmental, or pertaining to the State. There is no evidence to be found that the lease lands have ever served as a "political football," in the sense of party politics, as has so frequently been true of lands in the west. There is some indication that the early maneuver of the state to confiscate the lands allotted to the glebe and to the S. P. G. was prompted by a desire on the part of the state leaders to appeal to the larger proportion of the settlers at the expense of a minority group, the Episcopalians, by establishing a wider benefit from these shares—and at the same time "twist the tail of the British Lion." Even then (1794) the separate existence of the state did not have the unqualified approval of various groups of residents. There were still those who doubted the wisdom of leaving the jurisdiction of New York, there were those who yet believed in the advantage of joining with New Hampshire, and still others were dubious of the merits of people such as the Allens, who were prominent in state affairs. This is the single instance in which even the suggestion of partisan use of the lands can be found.

The lease lands are also to be viewed as an administrative problem. Some attempt will be made to compare the more centralized administration of certain of the public rights with the more decentralized administration of other shares. The general terms of the administration of the lands will be looked at; such aspects, for example, as part-time "amateur" administrators. Finally, the administration of the lands must be taken into account in any evaluation of the lease lands as a device for furthering public purpose. The State, earlier in the guise of the British colonial administration and later in the persons of the legislature and governor of Vermont, devoted a large area of the public domain, representing a considerable value, either at a capitalized figure or as taxable wealth, to certain purposes. This study will attempt some indication of what has happened to this great asset and to what extent it has contributed to the intent for which it was reserved.

Chapter II

HISTORICAL BACKGROUND

No picture of the lease lands system in Vermont can be complete without some understanding of the general history of the state. The latter is not the object of the present study; consequently there will be no attempt made to give a thorough or complete story of the circumstances out of which arose the fourteenth member of the Union. In fact, the main purpose to be served by this excursion into the history of Vermont is to illuminate the confusion which prevailed on all sides from the time of Benning Wentworth's crossing of the Connecticut River, until well after the establishment of a separate government between that stream and Lake Champlain. If the situation of the public lands is still obscure in the state, that is due in a measure to the manner in which the area was developed.

Numerous attempts have been made to establish the validity of one or another version of the struggles which occurred. Some of them have been of an official character, commencing with the representations in 1751 of Governor Benning Wentworth of New Hampshire and Lieutenant Governor James Delancey of New York in 1753 to the British Board of Trade and ending with the decision of the United States Supreme Court in 1932.¹ The latter case rose out of the concern of the states of Vermont and New Hampshire over taxation rights on the Connecticut River, for the solution of which it was necessary to establish the exact boundary line. The Court surveyed the entire history of the boundary, and its conclusions may be regarded as the authoritative statement, at least so far as American interests are concerned.² This, however, came very late, and long after the events affecting the public lands had ended. It should be noted particularly that the Court's opinion is the next statement, carrying a positive authority, following the British Order in Council of July 20, 1764, with the exception of the decision of the New York Supreme Court in the ejectment suits of 1770. And

1. *State of Vermont v. State of New Hampshire*, 289 U. S. 93 (1932).

2. The full statement of the survey is to be found in *Special Master*.

this latter was not acceptable to the New Hampshire grantees who at that date were still insisting on a further royal order. It is true that the colonial offices in London issued statements after 1764 which go to support or even reiterate the position taken in the Order in Council.³ But the British government never made a later positive and definite declaration; and, actually, the various instructions relative to land grants, issued thereafter to the New Hampshire and New York governors, and statements relating to petitions presented, do no more, at best, than to follow the general lines laid down in the Order. At worst (and this view is derived from reading the sequence and circumstances of such instructions and statements), they tended to make much less certain in the minds of the colonists the ultimate attitude of the British government.⁴

Other studies have been made by private investigators, some of them parties to the disputes and some later local historians of New England and New York. Here one encounters immediately the confused and controversial state of affairs, beginning with such publications as those of James Duane of New York, Ethan Allen and other "Vermonters," and closing with the latest study, that of Matt B. Jones.⁵ Probably the latter is the most accurate of the many accounts as it bears abundant internal evidence of careful scholarship and, furthermore, was written long after the smoke of battle had dissolved and there was a better opportunity to survey the field. But even here the reader is soon aware that the effort is somewhat partisan and controversial in that Mr. Jones is obviously attempting to discredit certain previous theses, such as that of Governor Hiland Hall, to the effect that Lieutenant Governor Colden was the villain of the piece.

While various factors, as will be seen later, contributed to the situation, the controversy over the area known until the Revolution as the New Hampshire Grants pivoted on a phrase in the Order in Council of 1740 which determined the boundary between New Hampshire and Massachusetts Bay. Most of this order is irrelevant, but there is an interest for this study in that the line was established to run from a point on the Merrimac River three miles north of Pentucket Falls, thence by a straight line extending "due west across the said River till it meets our other Governments."⁶ This, as is apparent, is a somewhat

3. *Ibid.*, Finding 86, p. 270.

4. *Ibid.*, Findings: 48, p. 248; 50, p. 249; 64, p. 256.

5. *Supra*, p. 12, n. 14.

6. *N. H. S. P.*, XIX, 536.

vague termination of a boundary, especially since the Order of 1740 establishing the province of New Hampshire had fixed no definite western boundary therefor. But, taken in and by itself, it would probably have been adequate, as His Majesty's ministers undoubtedly assumed. It did not, as the events later proved, suffice in the face of the conditions to which it was to apply.

Primary among these conditions was the fact that Vermont was then, as now, off the main currents of movement and consequently was somewhat later than surrounding areas in development, political as well as economic. The principal New York contacts with Canada moved along the western edge of Lake Champlain—indeed, even the fortifications were largely on that shore. There was not a very heavy traffic with Canada at best, and the major attentions of the New Yorkers were directed westward through the Mohawk Valley. New Hampshire looked toward the coast, with Portsmouth, and ultimately Boston, as its foci of interest, and the travel to Canada from those parts did not venture west of the Connecticut Valley. What east-west traffic existed, between Boston and Albany, crossed south of Vermont. And so the area, densely wooded and fairly difficult of passage, lay in a pocket. It was too far east for early development by New York and too far west to command attention while the energies of the early colonists of Massachusetts and New Hampshire were being absorbed by the country nearer the coast.

There had been some granting of land in the southeastern corner of Vermont by Massachusetts Bay, and these grants were affected by the boundary Order of 1740. But these settlements did not survive and were not among the issues which lead to the New Hampshire-Massachusetts boundary settlement. When the grants finally were revived, it was by receiving New Hampshire confirmations. Conflicting grants in southern New Hampshire and, especially, the status of Fort Dummer were at stake. Indeed, while Massachusetts appears in the picture from time to time, until the last,⁷ her role in the conflicts swirling through the New Hampshire Grants was definitely a passive one and was induced by the efforts of former Massachusetts men interested in the Grants who thought the Bay colony might afford a stronger advocacy for their case. Essentially, the issues were drawn between New Hampshire and New York and remained thus until in 1775 a third element was introduced when the first definite suggestions were made public that the men in the Grants establish their own government. Matt Jones has said that,

7. *Special Master*, Finding 194, pp. 346-347.

Its [Vermont's] early history is the story of a contest between partisan groups over a district that, until these settlers came, had been virtually a no man's land. This conflict involved two incompatible theories of land ownership and development. New York fostered great manors owned by a few wealthy men and cultivated by tenant farmers, while New Hampshire, like the rest of New England, followed the policy of dividing the land into relatively small farms owned in fee by the men who tilled the soil. In the end the New Hampshire group prevailed⁸

The story is essentially another of the incidents in North American affairs in which the British government failed at colonial administration. In this case, at least, one discovers the admixture, on the one hand, of London's inability to visualize the dimensions and nature of colonial circumstances, the failure to appreciate the dynamic and often urgent character of colonial developments, the lack of careful selection of colonial administrators; and on the other side of the Atlantic, the conflicts of interest and policy of governmental authorities, the cupidity and greed of speculators, and the almost primitive insistence of the small man on his being permitted to open the wilderness as a home. For its beginning, we must go back, as did the Privy Council in 1764 and the United States Supreme Court in 1932, to the grant made by King Charles II to the Duke of York in 1664, as the eastern boundary therein established was the line at which the New Hampshire-Massachusetts Bay boundary would "meet(s) our other Governments."⁹

For some time this eastern boundary of New York was quiescent. New York granted lands along or near it; to some extent, these grants followed the New York "patroon" pattern of large individual holdings. Connecticut and Massachusetts Bay were busy nearer the coast. But, as the latter colonies became more mature, there was the inevitable westward movement in them, and we find them during the early eighteenth century granting lands so far to the west as to come into conflict with the New York jurisdiction. This condition came to be attended by all the details so familiar in the history of American expansion—squatters on the land, struggles between groups of small holders and large-scale claimants, vociferous claims and counter-claims of a legalistic nature,

8. Jones, p. vii.

9. "Representation of the British Board of Trade, July 10, 1764, Concerning the Boundary Line Between the Provinces of New Hampshire and New York," in British Public Record Office, C. O. 5/942, fols. 284-301, quoted in Jones, App. A, 397; cf. *Special Master, Findings*: 2, pp. 223-224; 4, pp. 225-226.

insistence by both parties that all they wish is a fair determination of the dispute by governmental authority, and then the refusal by the losers of peaceful acceptance of such rulings. And, finally, as again has been so frequent in American land history, one finds that ultimately a tenacious, actual, physical possession of the land proved to be the valid nine-tenths of the law.

The Connecticut-New York portion of the line had presumably been settled by agreement about 1684 so that the quarrels in that section were chiefly individual affrays between New York patentees and Connecticut squatters.¹⁰ The line between Massachusetts Bay and New York was the source of considerable friction and difficulty. Massachusetts in a very casual way apparently assumed that it should extend itself westerly to a position even with Connecticut, and the government in New York was more than casual in its protests over what, in its view, were encroachments.¹¹ The boundary was not adjudicated until after 1770, but, what with the energy of Massachusetts settlement and the lack of vigorous countering measures in New York, for every-day, practical purposes the line may be regarded as having been an approximate extension of the Connecticut-New York line. North of Massachusetts Bay, New York assumed that its eastern extent was to the Connecticut River, but the New York government did nothing about the area so included and, in fact, seemed hardly aware of its existence. This is indicated by the absence of any New York activity respecting the various phases of the history of Fort Dummer, which actually lay within the area.

The New York boundary with Connecticut and Massachusetts Bay is of concern to this study because it was used, first by Governor Benning Wentworth¹² and later by the New Hampshire grantees, as the basis for claiming that the Massachusetts Bay-New Hampshire boundary line, as established in the Order of 1740, met the New York government at a point twenty miles east of the Hudson River. Otherwise, there would have been no position whatever between the Connecticut River and Albany at which the New Hampshire Grants could have been terminated with sufficient reason even for the specious logic by which they were supported. While the claim to this line by the protagonists of the New Hampshire cause has been viewed by judicial eyes as invalid,¹³ the

10. *Special Master*, Finding 5, p. 226.

11. *Ibid.*, Finding 6, p. 226.

12. *Ibid.*, Findings: 4, pp. 225-226; 8, pp. 226-227.

13. First by the Supreme Court of New York in the ejectment suits of 1770 and later in the case of *Vermont v. New Hampshire*, 289 U. S. 593 (1932).

practical argument respecting it led to the appearance of Vermont as a separate jurisdiction and affects the study of the lease lands. So it must here be regarded as having existed, at least in the minds of some of the men of the time.

Having thus briefly reviewed the boundary relations around the New Hampshire Grants and the place of Massachusetts in the story, it will be well, before proceeding with the history of the Grants, to have a clear impression of the various land grant operations with which the lease lands are involved. Connecticut, like Massachusetts, is soon eliminated. Although Connecticut at one time possessed an area of land of some 44,000 acres within the region under consideration, it need detain us but little. This area was the so-called Equivalent Lands, received from Massachusetts in an earlier boundary settlement between those two colonies. The Equivalent Lands were soon sold at auction to Massachusetts people. For our purposes, the significant fact is that at a later date, when permanent settlement took place, the title to these lands was confirmed by New Hampshire grants. Another set of grants of which notice should be taken, before being dismissed, was the French seigneuries, the grants of which extended down the eastern side of the Champlain Valley. To quote Matt Jones :

For some time after the Champlain Valley became a British possession the proprietors of the French seignories along the lake continued to urge their claims before the British government, which, at times, appeared well disposed, but in the end the territory was occupied by settlers claiming under British provincial titles.¹⁴

Thus neither of these situations can have had any material effect on the lease lands.

Except for a small amount of early incursion by squatters, which it would be difficult, if at all possible, to identify at the present time, the lease lands are found to have been involved in four land grant operations, three of which were of general concern and broad extent and the last of which was a localized affair of a peculiar nature. These were: first, the grants made by Benning Wentworth as Governor of New Hampshire; second, ordinary grants and patents issued in the name of the provincial government of New York; third, patents based on a royal proclamation of October 7, 1763, and issued through the New York

14. Jones, p. 6; Guy O. Coolidge, "French Occupation of the Champlain Valley," *Proceedings of the Vermont Historical Society*, New Series, VI, No. 3 (1938), 144-313.

government to reduced officers and discharged soldiers of the French War, together with additional military patents obtained by mandamus orders from the Crown; and fourth, the land manipulations of Colonel John Henry Lydius, who procured deeds from Mohawk Indian chiefs to a large tract of land some sixty miles by twenty-four miles in extent along the Otter Creek Valley in the western part of Vermont.¹⁵ The following survey will merely attempt to show the relations between these four groups of land grants, and the people affected by them, and thus offer a clearer conception of how the present status of the lease lands evolved.

Jones remarks: "It may be truly said that the history of Vermont begins with Benning Wentworth's great land speculations, long known as the New Hampshire Grants."¹⁶ And in many respects this can be accepted as true: it was this activity which created the quarrel out of which the state was forged; it was at this time that permanent settlement commenced; and it was at this point that officials and public became conscious of the existence of the region. Certainly, for the purposes for which Mr. Jones was writing, Benning Wentworth offers a most satisfactory point of departure. But, for the present study, a clearer picture can be afforded by following a chronology more strictly tied to that of the various land grant operations outlined above. This cannot be achieved completely because there was a considerable amount of overlapping in time as well as acres by the various grants. However, each can be introduced at least in its proper period and thus provide a sharper definition of its influence on the lease lands.

This is particularly justified in this case because, as will be seen later, the fate of the lease lands was more closely related to land speculation than to land settlement. This statement might be challenged in some aspects of the issue, as, for example, on the grounds that the lease lands were provided on the assumption that they would encourage settlement, or again, that the final separate existence of Vermont was made possible by the presence of actual settlers. Nevertheless, it is asserted here and will be shown later that the buying and selling of land—one might well say, the greed for land—exerted a heavy influence on what became of the lease lands.¹⁷

15. *Proceedings of the Vermont Historical Society*, New Series, I (1930), 83-84, 179-181; II (1931), 32; VI (1938), 220, 276-277, 281.

16. *Op. cit.*, p. 19.

17. *Special Master*, Findings: 129, p. 307; 171, p. 335; 197, p. 348; 233, p. 371; 260, p. 389.

Parenthetically, it should be observed at this point that the very assumption that the lease lands would encourage settlement indicated a belief in the cogency of the urge to possess and profit from lands. That the history of American lands is one in which the lands were largely regarded as a direct source of profit is too well known to require support here. Land speculation, indeed, in the earlier days of our country attained a respectability achieved by the stock market during the third decade of the present century. And the profits to be made from the ownership, as distinct from the use, of land have played a powerful part throughout the development of the United States. Sometimes we find such profits being derived directly from the sales of lands, sometimes from lease-rents, and sometimes less directly from the fees accruing to officials from the legal transactions involved. The clearing of obligations by the granting away of lands was still another pattern, set by the kings of England and continued by American politicians. All these practices appear in the Vermont story, and all of them were influential on the lease lands.

The earliest land acquisitions which developed into towns recognizable today as a part of Vermont were the Equivalent Lands, already remarked. They were not then in the form of town grants but had been purchased at auction. They lay within the area of the present towns of Putney, Dummerston and Brattleboro in southeastern Vermont, and our interest in them is slight. There is the pleasant point that two of these original purchasers bequeathed their names to present-day towns even though the early settlement of them did not survive.¹⁸

But the Equivalent Lands deserve some space in this study. Probably the most significant aspect of them is that they led to the establishment of Fort Dummer, and in turn, the fort appears to have been the earliest influence to attract the attention of Benning Wentworth to the region west of the Connecticut River. Wentworth became governor of New Hampshire in 1741, and shortly thereafter Massachusetts urged that responsibility for the maintenance of the fort be shifted to New Hampshire. This was agreeable to London, and instructions to this effect were issued by the Privy Council to Wentworth.¹⁹ Nothing was done for the fort by New Hampshire, but Wentworth in the course of

18. William Dummer and William Brattle.

19. *Acts of the Privy Council of England*, Colonial Series, III, 789, cited in Jones, p. 15, n. 25; *Special Master*, Finding 7, p. 226.

the extensive debating would have been brought to thinking of the trans-Connecticut region.

The Equivalent Lands have one more facet of interest here in that they came to be among Wentworth's earliest grants west of the river. In 1753 he acceded to petitions of the grantees' heirs and issued charters to replace the older Massachusetts titles. These charters were for Brattleboro, Dummerston (then Fulham), and Putney.

Other early Massachusetts activities should be noted here, too. In 1735 two townships were laid out by Massachusetts on the west side of the river, as a small part of a larger maneuver in the long boundary dispute with New Hampshire. Nothing fruitful in the way of settlement occurred, but these townships, like the Equivalent Lands, contributed to directing Wentworth's attention westward. Here, too, the heirs received charters from Wentworth, supplanting the earlier Massachusetts grants. These charters, issued in 1752, established the towns of Rockingham and Westminster. These five towns were not the first of Wentworth's charters in the disputed area.²⁰ They open the narrative because the Massachusetts efforts out of which they developed were the earliest English land grants between the Connecticut River and Lake Champlain. As to the lease lands, they do not offer difficulties.²¹ The covering charters from Wentworth provided for public shares with the exception of school land, and settlement had been so slight that space remained for accommodating these shares.

New York enters the scene next with the Walloomsack Patent of 1739. This was a rather considerable grant, including some 12,000 acres, and was in favor of Edward Collins, James Delancey, and others. The patent was essentially to include the major portion of the valley of the Walloomsack River, which makes a great curve through the area now represented by the Town of Bennington, joining just westward of Vermont with the Hoosic River and flowing thence into the Hudson.

20. They do, though, bulk large in the first phase of Wentworth's land operations, representing just short of a third of all his charters prior to the French and Indian War, he having issued sixteen charters before hostilities temporarily stopped him.

21. However, some lease lands were indirectly affected. The Massachusetts program also provided some townships on the east bank of the Connecticut. Just after Wentworth made his grants of Rockingham and Westminster several families crossed from Charlestown, New Hampshire, and squatted in what later became the Town of Springfield. They were successful in resisting ejectment by later legitimate settlers and so created one of the early instances in which adjustment of conflicting claims was necessary. Jones, p. 18.

No settlement developed in connection with this patent, and it lay quiescent for many years. Indeed, it might well have been disregarded in this study except for its later significance. When the era of land speculation was in full bloom and New York's interest in the lands east of the Hudson had been stimulated, this old patent was revived by individuals in New York and added its quota to the babel of dispute.

Although not in some respects an English land grant operation, a third instance of early land operations in the Vermont area is of consequence. This is the speculation of Colonel John H. Lydius, which involved originally a large section of western Vermont. Lydius was a Dutchman from Albany, New York, who managed, in 1732, to secure from Mohawk Indian chiefs "title" to an area of about a million acres of land following the Otter Creek Valley for some sixty miles. It was not an "English operation" in that it was a grant which was not derived from the royal authority, nor was the speculator an Englishman. However, it became a matter of concern to the English. Lydius and his title from the Indians seem never to have had any acceptance or standing with British colonial authorities. Despite these handicaps, his affairs intrude on the lease lands. He displayed an energy and ingenuity much greater than that of the majority of land speculators, with the result that he succeeded in marketing a considerable portion of his questionable holding. Instead of concentrating on the New York land market, he looked mostly to New England and had an active market there, notably in Connecticut and Rhode Island. One cannot but admire the soundness of his business instinct, regardless of his ethical position. Although he was accustomed to the New York system of land holding, he cut his cloth to please his customer and proceeded to lay out his grant in townships six miles square, giving them names and numbers. Furthermore, in disposing of the lands he fell in with that with which New Englanders were familiar and erected a proprietary by selling, or granting, proprietors' rights to undivided equal shares of the township, the shares being 60 in number, again a customary New England practice.

It should be understood that the Lydius marketing activities occurred at a much later period—not until after the close of the French War. The years 1760 to 1763 are the span of the development, which it will be seen coincided with the period of greatest activity of both Wentworth and the New York authorities; and thereby the Lydius grant gained more influence as a part of the picture of conflicting land claims than it would have had otherwise.

The entire narrative of the Lydius episode is told here, somewhat out of chronological sequence, in order to dispose of this unique element of the jigsaw puzzle of Vermont lands. As with so many of the speculative land grants in the region, nothing finally came of most of the Lydius grants, and they fell into desuetude. However, some of the grantee proprietors did sell their shares; and, in fact, settlement, based on the Lydius Indian title, did occur in two of his townships. These Lydius towns, Durham and Fairfield, overlay portions of the Wentworth towns of Clarendon and Rutland, and this led to a dispute between the settlers under the Lydius claim and grantees of the Wentworth towns. The dispute went into the New York courts with success for the Lydius adherents, even though the New York provincial authorities had earlier prohibited settlement under Lydius titles. An important result of the litigation was that the attorney for the Lydius settlers, James Duane, took his fee in a large holding of land in the Lydius towns concerned. This fact is considered important because Duane, who was a land speculator of consequence, had great influence in New York and did much to advance generally the fortune of New York claimants of title to lands in the Vermont region as against claimants under the Wentworth charters. Lydius becomes a part of this study because, it must be remembered, only the Wentworth grants included reservations of land for the public rights prior to Vermont independence. Any other source of land grants or land settlement consequently exerted a force toward reduction of lease land acreage or even total elimination of the public shares by the simple act of prior occupation of the land under a title which gave the beneficiaries of the public shares no legal wedge by which in later years they could open a claim to land. Not only did Lydius' operations lead to these actual settlements which produced land conflicts, but the New York decision of 1771²² (which amounted to a foreclosure of New Hampshire titles) cast such a shadow over the Otter Valley that the General Assembly of Vermont took cognizance of the problem, as one of serious proportions, and passed an act in 1785 to quiet titles of land involved.²³

The several localized early land operations have now been described,²⁴

22. *Special Master, Findings*: 55, 56, p. 251; 59, p. 252; 60, pp. 252-253.

23. Slade, *State Papers*, pp. 500-503.

24. The seigneuries in the Champlain Valley were not included because in every case they failed both as a basis for land titles and for permanent settlement. Consequently, they exerted no influence on the state nor on the lease lands.

and the way is clear to proceed with the story of the major land operations and the principal protagonists in the competition for the wild lands lying between the Connecticut River and Lake Champlain, the competition which grew into a conflict out of which Vermont was created as a separate state. In its simplest terms it was a rivalry between Benning Wentworth and the authorities of the Province of New York, the latter principally personified by Lt. Governor Cadwallader Colden. Later on, the efforts to control the land became a struggle of many adversaries on either side of the issue, speculators and settlers.²⁵ But these two men, more than any others, created and fostered the situation. Much ink has been spread in efforts to prove one or the other of them justified in his position. For the most part, such writing has not had more than an incidental interest in defending the ethics of either of the men, except as this contributed to supporting the "rightness" of one or another set of land claims or the actions involved in the separation of Vermont from New York.

In this study there is no concern with the merits of the argument of either side of the struggle. The central fact is that the lease lands were granted in town charters, which, together with the later Vermont charters, essentially blanketed the entire region now embraced in the state of Vermont. Our interest is not in whether such grants should have been made, but is in what became of them. It is only as conflicting land grants and competing claims to land may have affected the fate of the lease lands that the history of the New Hampshire-New York issue must be observed. Only those aspects of the matter having such a direct bearing on the outcome are to be presented, and this focus of interest is to be borne in mind wherever judgments are herein offered.

Regarding the colonial history of Vermont from the viewpoint of its land grants, it may be divided roughly into two periods or phases, one preceding the French War (1754-60) and the other following that period of hostilities.²⁶ Although Wentworth became governor of New Hampshire in 1741, the first phase should be regarded as actively open-

25. *Special Master*, Findings: 45, 46, p. 247; 92, p. 274; 93, pp. 276-277; 99, 100, p. 285; 108, pp. 291-292; 114, p. 294; 129, pp. 307-308; 171, p. 335; 197, p. 348; 233, p. 371; 260, p. 389; 269, p. 393; 271, p. 394; 273, pp. 395-396.

26. The war years are largely a blank space. Settlement naturally did not proceed. In fact, it tended to decrease in the face of the hazardous position between the British and the French colonial forces. Neither did the region hold any attraction for land speculators with the French forces in Canada so greatly increasing speculative risk. It is noticeable that even Wentworth made no grants during the war.

ing in 1749-50, at which time Wentworth initiated correspondence with New York respecting boundary lines and made his first grant by chartering the town of Bennington.²⁷ Basically, this phase may be characterized as a period of germination of the issue. It was not a time of much land granting. Wentworth issued only sixteen charters.²⁸ Of these, five have been found to have had earlier New England roots.²⁹ And of the sixteen, only four towns had sufficient vitality to survive the war³⁰; the other twelve charters each had one or more renewals or regrants following 1760. On the New York side there was apparently no land granting done in the first phase, with the exception of certain military and royal mandamus patents of no great extent. Indeed, always excepting the individual grants just mentioned, New York made no major grant between the old Walloomsack patent of 1739 and the Hendrick Schneyder patent to a tract of 10,000 acres, just to the south of the Walloomsack area in 1763.

The principal activity prior to the war was correspondence directed at each other and to London by New Hampshire and New York authorities.³¹ Wentworth started the ball rolling in his letter to Governor Clinton of New York in November, 1749, in which he requested information on the boundaries of New York inasmuch as he proposed to commence granting lands.³² Prior to this letter the only "overt" act regarding boundary lines had been that in 1740 when the Massachusetts-New Hampshire line was surveyed. The New Hampshire surveyors had extended that line westward to a point twenty miles east of the Hudson River, this point being a northerly extension of the line in process of stabilization between Connecticut and Massachusetts and New York.

The year 1750 saw a spirited exchange of letters between the two governors, terminated when Clinton demanded that the Bennington grant be withdrawn or he would be forced to make a representation on the matter to the Crown. This drew a reply from Wentworth that the grant could not be withdrawn and proposing that both provinces make

27. *Special Master*, p. 180.

28. Bennington, Halifax, Wilmington, Marlboro, Westminster, Rockingham, Stamford, Woodford, Townshend, Brattleboro, Dummerston (Fulham), Putney, Newfane, Chester, Guilford, Grafton (Tomlinson).

29. *Supra*, pp. 27-29.

30. Bennington, Halifax, Marlboro, Rockingham.

31. *Special Master*, Findings: 30-35, pp. 240-242.

32. E. B. O'Callaghan, ed., *Documentary History of New York* (Albany, 1850-51), IV, 331-334; *N. H. S. P.*, X, 199-204, cited by Jones, p. 21.

representations. Wentworth acted on this plan without much delay, but New York procrastinated. Although Clinton received his Attorney-General's draft supported by remarks from Cadwallader Colden, then Surveyor-General, in 1751, the New York case was not forwarded to London until late in 1753, after London had informed that province of Wentworth's statement. Earlier in that year New York had announced that anyone settling under New Hampshire grants would be subject to arrest and punishment. Thus the matter stood at the outbreak of the war in 1754, Wentworth in the meantime having issued the fifteen additional charters.

The prosecution of the war occupied the attention of all concerned so that no more was done in the settlement of the issue than in the settlement of the lands.³³

The British success in the French War, together with the war itself, set the stage for the second and more spectacular phase of the land history of the Grants. Removal of the French and Indian threat from the north greatly enhanced the attractiveness of the region for both settlers and speculators; accelerated economic activity in the colonies increased the desire and pressure for the utilization of additional wild lands; the campaigning against Canada had vastly increased the number of those acquainted with the area as well as those in the cities now more aware of it as an investment field.

Superimposed on all this natural change of conditions was the stimulus engendered by the decision in London to reimburse reduced officers and discharged soldiers of the British army by means of grants of land. This latter element was of particular consequence in New York. A large proportion of the military personnel eligible for such grants was discharged in New York, and that province keenly felt the pressure for land with which to satisfy the demands of the ex-soldiers. Fees attendant on the granting of lands developed alluring dimensions for the New York authorities. And those in New York City susceptible of interest in speculating found themselves literally surrounded by grantees of land, many of whom simply wished to realize on the grants and proceed home to England. New England speculators would have been titillated by the greatly increased talk about the Grants resulting from the yarns of the colonial troops who had been through the region.

Little time was lost by either New Hampshire or New York in the

33. *Special Master*, Finding 35, pp. 41-42.

opening of the "land campaigns." The military campaigning ceased in 1760, and in the same year Wentworth resumed the issuance of town charters west of the river, with the grant of the town of Pownal.³⁴ An odd and unexplained hiatus occurred then, as his next charter was not issued for more than a year. But the year 1761 saw him embark on an all-out schedule of sixty-three charters. The following year produced only nine, but 1763 brought forth thirty-seven, and he concluded his activity in 1764 with the granting of two towns. Jones assumes that he stopped then because of an order to this effect from the Board of Trade, induced by a complaint made by General Gage that his department of Trois Rivières was suffering encroachments.³⁵ This may be so, but it is open to question as the correct explanation in view of the fact that Wentworth had been more than casual in his disregard of other royal instructions anent land granting. Other explanations are at least plausible.

A glance at the map of Vermont towns will show at once that Wentworth had pretty well covered the more desirable parts of the region with charters—all those sections which would have the most appeal for the sort of speculators who customarily composed his lists of grantees.³⁶ The entire western margin was covered by charters to a depth of two to three tiers of towns with only two stretches excepted. The same was true of the west bank of the Connecticut, there being but two breaks on this edge. And most of the Winooski Valley was accounted for. Indeed, the open spaces remaining are sharply noticeable and lead to the guess that they are to be accounted for by the inadequacies of mapping and locating the towns. All that remained ungranted in the region was the central mountainous portion and the heavily forested and distant northern interior.³⁷

34. It is interesting to note that Wentworth's program of grants was so arranged that he had soon filled out the southwestern extremity of the region for which he was contesting with New York. His first grant was the town of Bennington, and following the war his first effort was Pownal. Thus he had covered by grant his point of closest approach to and contact with the New York authorities. Whether this was so planned by him as a maneuver to block off the New Yorkers is one of those much debated points in the long series of argumentative writings. It is equally probable that this corner of the region figured early in the game because of the relative attractiveness of the land and its relative accessibility. It should not be forgotten that the Walloomsack and Schneyder patents, New York's earliest major grants in the region, likewise embraced the same area.

35. Jones, p. 43.

36. *Special Master, Findings*: 10, p. 228; 89, p. 271; 97, p. 281.

37. See App. I.

Still another possible consideration is that Wentworth had by this time grown old and tired. He had now held his office for 23 years. The Board of Trade had commenced to apply considerable pressure on him respecting his official duties. The year 1764 brought forth the long awaited definitive statement from the Privy Council on the boundary question, and in 1765 the old governor resigned his office. It may be wondered whether, with the granting of the towns of Corinth and Hubbardton in 1764, he concluded that the game was no longer worth the candle. Further, it may be assumed that the increasing clamor against his grants, raised by Colden of New York and reinforced finally by the Council's boundary announcement, would have made his charters much less attractive as speculations.

Thus is concluded the New Hampshire aspect of the major land operations. Some correspondence continued into 1765 between Wentworth and the Board of Trade, which consisted for the most part of apologetics on Wentworth's part. It is of interest here only in that Wentworth failed to give the Board fully correct information about his grants and thus may have contributed to the confusion and uncertainty of mind in London in later occasional considerations of the contentions of the various land claimants. New Hampshire essentially bows out of the picture at this point. Benning Wentworth's successor in office, his nephew, John Wentworth, made some mild gestures toward supporting in London the claims of his uncle's grantees and their settlers. But he never was energetic about it, nor effective.³⁸

New Hampshire played only two further roles in the history of Vermont, neither of which directly added to the land grant confusion, but both of which had some influence in the final outcome, in the establishment of the separate state of Vermont—and thus the preservation of the New England system of towns and the consequent preservation and extension of the lease land system.

The first of these roles was for the most part purely passive. New Hampshire served as a rallying point for the resistance developing in the Grants against New York authority. There were some who were sincerely sympathetic to the view that the Grants would best be a part of the neighboring New England province; others played upon the theme of the New Hampshire source of their charters and land claims; the New Hampshire authorities were an immediate point of appeal from the pressure of the New York authorities, even though Portsmouth

38. *Special Master*, Finding 94, p. 277.

officials actually did nothing constructive about the situation. This role of counter-foil is nicely indicated by the fact that those most vociferous in supporting the New Hampshire genesis of land rights in the Grants were for the most part those whose lands lay closest to New York.³⁹

New Hampshire's final part in the piece came after the Vermonters had set up shop for themselves and were endeavoring to attain stability and recognition. It originated from the somewhat amusingly ambitious incident in Vermont's first year, in which the new government became expansionist minded and proposed to annex to itself a group of New Hampshire towns east of the Connecticut River. New Hampshire authorities were neither agreeable to nor amused by this enterprise. And the Vermont proposal was the first action in a series of moves which took on the force of an open breach between the two jurisdictions and culminated in New Hampshire's claim before Congress for all or part of the Vermont territory.⁴⁰ This again put New Hampshire in the position of counter-foil to the New York insistence on retention of authority east of the Hudson and Lake Champlain and thus, unwittingly, aided the efforts of those Vermonters who were striving to maintain the state as a distinct and separate jurisdiction.

In some respects, the New York side of the contention is clearer and simpler than the Wentworth position; in other ways, it is more difficult to delineate. To begin with, the New York legalistic position was simple and consistent throughout. It relied continuously on a reiteration of its authority eastward to the Connecticut River on the basis of the boundary terms in the 1664 grant to the Duke of York.⁴¹ Colden, as surveyor-general, in his remarks of 1751 to Governor Clinton, and later as lieutenant governor, brought forth several additional justifications for New York primacy, even to include such arguments as the royal advantage in the higher New York rate of quit-rents.⁴² But such thoughts as these were regarded only as an extra element of strength. Essentially, New York rested its argument on the original grant of that province, and ultimately with success.

39. On the other hand, it appears all through the turmoil which culminated in the establishment of Vermont that New York's strongest support came from the towns in the Connecticut Valley. *Ibid.*, Findings: 45, p. 246; 47, p. 247; 55, 56, p. 251; 61, p. 253; 62, pp. 254-255; 81, pp. 265-266; 84, p. 268; 89, p. 271; 99, p. 285; 137, p. 315.

40. *Ibid.*, p. 142; Findings: 195, p. 347; 233, p. 371; 239, p. 373.

41. *Ibid.*, p. 182; Findings: 36, p. 242; 37, p. 243.

42. Jones, p. 35.

Another aspect of the New York picture which is relatively simple is its record of lethargy in administering its eastern marches. For all of its insistence on its rights, in representation and proclamation, it gives a strong appearance of having been reluctant to support its argument with action. And this is largely true throughout the history of the episode. Ethan Allen and his successors were noisy in their denunciations of New York efforts to subjugate the settlers in the Grants. Looked at more calmly, the New York record is remarkable, instead, for its lack of application of the power of government. Indeed, it is possible to impute to New York the original fault for the development of the New Hampshire-New York land collision. If New York had, early in its history, exerted the authority which it always claimed and had administered the eastern area on which it insisted, Benning Wentworth's charters could not have bloomed so lushly. In fact, it is probable that an effective New York administration of its outlying reaches would have been sufficient to have prevented him from starting on his course.⁴³

At any rate, the fact remains that New York failed to administer the eastern lands, until it was too late to regain control. As has been noted, the province had made but one grant of land on the western margin of the disputed area prior to Wentworth's entering the scene. No effort had been made to grant, settle or develop the vast acreage, and no interest in doing so was apparent. It would seem, even, that the New Yorkers were largely unaware of the Green Mountain country until Wentworth attracted their attention with his letter of 1749 to Clinton and the subsequent correspondence. Even then no great energy was displayed. Clinton's dilatory handling of the matter of the representation to the Crown is typical.⁴⁴ The province, it is true, had issued in 1752 its strongly worded proclamation against settlement west of the Connecticut River under either New Hampshire or Massachusetts grants, threatening such settlers with penalties. But there appears to have been slight effort to enforce its terms.

In the 1750 correspondence between Wentworth and Clinton there was an implied agreement that each province would submit its representation to England and that until the Crown announced a finding, both

43. This lack of aggressiveness had also characterized New York's stand respecting its eastern territory to the southward in the disputes with Connecticut and Massachusetts, as was admitted by Colden as early as 1738 (*Documents Relating to the Colonial History of New York* [Albany, 1856-83], VI, 121, cited by Jones, p. 31), and a later commission expressed the same view.

44. *Supra*, pp. 32-34.

would refrain from any further land grants in the area at issue. New York's easy-going complaisance appears here as well, for, although Wentworth disregarded this state of truce and proceeded to the chartering of his towns, New York desisted from further grants for a long while. After cessation of hostilities in the French War, New York proceeded to make some grants of military and mandamus patents, and the Schneyder patent of 10,000 acres was issued by Colden in 1763.⁴⁵

But it was not until after the Order in Council of 1764 that New York became actively engaged toward the east. Jones, in his studied defense of the New York side of the whole affair, adduces this as illustrative of the good faith of the New York authorities as compared with the Wentworth ethics. However, it can just as readily be considered as no more than another illustration of the New York failure to exercise an active authority over the territory to which it laid claim. The latter view is preferred by the present writer. No evidence has appeared that New York even attempted to prevent the New Hampshire grants from becoming effective; no policing of the area was done, even toward preserving the status quo until the Privy Council should act. And at its greatest activity, New York land granting was limited in scope; the western fringe, along Lake Champlain, and portions of the Winooski Valley represent the principal New York penetration toward the east.⁴⁶

New York was equally ineffective in its infrequent and abortive efforts to deal with the settlers in the later stages of the affair. A show of force was developed just sufficient to anger the settlers who were opposed to New York control, without being sufficient to impress them with any need to submit to the authority of government, or to accomplish New York intentions. New York surveyors were halted in their work by the men of the New Hampshire Grants and sent back home; ejectment actions were faced down by groups of the settlers; some New York grantees and their settlers were forced out by the Allen people with impunity; and New York's attempt to establish judicial courts in the eastern counties of Windham and Windsor were frustrated by the settlers. The military was never used by New York, and the police authority only sparingly and ineffectually.⁴⁷ Despite the sound and fury of Allen's denunciations of New York and the fretting of other settlers,

45. Jones, p. 46, n. 48.

46. *Special Master*, Findings: 89, p. 271; 99, p. 285; 352, p. 462.

47. *Special Master*, pp. 93-94, 100-102, 105, 112, 128-129; Findings: 71, p. 258; 73, p. 259; 77, pp. 262-263; 84, p. 268; 91, pp. 272-273; 94, p. 278; 97, pp. 281-283; 128, p. 306; 263, p. 391.

the quarrel which ended in the separation of Vermont was of the dimensions of a squabble. So far as the records show, two lives were lost⁴⁸ and not too much lesser physical injury incurred. It would appear indeed that the Green Mountain Boys may be credited with far more man-handling and property damage to New York adherents than can be traced to any enforcement activity by the New York authorities.

It may be questioned whether the dispute over the territory would ever have become a serious issue or led to its later development except for the rise to power of Cadwallader Colden, who became Lieutenant-Governor of New York in 1761 and from time to time exercised the gubernatorial power in the absence of a governor. It is more than possible to speculate that without his insistent championing of the New York cause, the region might well have fallen to New Hampshire by default.⁴⁹ True it is that the later New York governors, Dunmore and Tryon, made much of the matter. But that was after Colden had sponsored it into a position of prominence as a policy and had gradually acquired adherents to his cause who became interested as speculators, of whom James Duane was perhaps the most notable. By that time, of course, the pressure for land had increased greatly, a factor which was an influence on the later governors, and Tryon at least appears to have had a keen interest in fees. But the record indicates that Colden's was the effort exerted at the critical periods. The majority of the really large patents was issued by Colden, and in less than a year after the receipt of the Order in Council he had granted some 174,000 acres in the disputed area. He is credited with having granted approximately 1,000,000 acres altogether.⁵⁰

The aspect of the New York side of the affair which is more involved and difficult of delineation than the New Hampshire counterpart is the matter of actual grants of land, including the location, extent and grantees. And this is necessarily so because of the differences between the two provinces in their principles and procedures respecting

48. They were William French and Daniel Houghton, who died of wounds received during a riot against the Cumberland County court at Westminster in 1775. Such rioting was not new and was more a demonstration against the British than associated with the land title controversy. Jones, p. 268.

49. This view is taken by Jones, p. 65, who also quotes Hiland Hall, *Early History of Vermont* (Albany, 1868), p. 462, to the same effect.

50. Edward D. Collins, *A History of Vermont* (Boston, 1903), App. pt. III, Table A, p. 296. Hereafter cited as Collins, *Vermont*. Hiland Hall, "New York Land Grants in Vermont," Vermont Historical Society, *Collections* (Montpelier, 1870), I, 158-159.

land holdings. New Hampshire carried on the New England tradition of town grants, and Wentworth applied this in the western land, with no more than a half-dozen exceptions in which he made smaller grants to individuals. Consequently, his grants are represented by the collection of town charters which he issued, totalling 128. This is not to imply that all is clear as to the particular land involved. Something has already been said regarding disagreements on the total number of his charters and the careless location of the grants on the land, and more will be brought out later. But the general proportions and outline of his operation are simple in comparison with the New York grants.

The latter province adhered to the method of individual land grants and ownership. A very few patents were issued for great tracts to a group of grantees, small in number compared to a New England list of proprietors. These included the old Walloomsack patent and the Schneyder patent, already discussed, as well as the Princetown patent issued in 1765 by Colden to Duane and others of his friends, and that of Socialborough, a large tract including the Wentworth town of Rutland. The military and royal mandamus patents, while individually smaller, collectively made up 300,000 acres of the 2,500,000 acres granted by New York in the Vermont territory.⁵¹ These latter patents total to an imposing number of grants and were strung out over a number of years so that they are difficult to identify and arrange. It must be borne in mind, too, that the New Yorkers had even less than the New Hampshire authorities in the way of survey data and were considerably hampered in trying to gain more accurate knowledge by the settlers' proclivity for chasing off the New York surveyors. The majority of these New York grants located the land only in a general way in relation to some known natural feature such as a river valley, and it was presumed that the grantee would see to the particular survey. This vagueness of land location is well indicated in that at least some of the patents specified that the acreage must be so surveyed as to comprise a compact tract and should not be extended just along the valley meadow lands—each tract must include its quota of hill and dale. It may readily be seen that from such ill-defined grants, the opportunity of collision with prior settlers was greatly increased.

One further activity of New York must be noted as it provided its share of later confusion. This was the program which was carried on

51. Jones, p. 278; Collins, *op. cit.*, App. pt. III, Table A, p. 296.

over a number of years of issuing New York confirmations of Wentworth grants. Altogether nineteen such towns were confirmed.⁵² Two possible effects on the lease lands lay in this program. In the first place, some confirmation charters included radical changes in the list of proprietors, including New York land interests, and lease land acreage could well have been used to accommodate such interests, remembering always that New York did not practice reservation of such public rights. The second factor making for confusion was the group of "in lieu" grants. In at least four instances proprietors under Wentworth grants petitioned New York for confirming charters and were favorably received by New York. But it was found that the Wentworth grants had in the meantime been otherwise encumbered. So a solution was reached by awarding the proprietors the grant of a new and different town "in lieu" of their previous Wentworth town.⁵³

New York's land granting was interrupted in 1771 by receipt of an order from the Board of Trade that no more grants should be made in the disputed area until further notice, and such notice did not appear before 1777.⁵⁴ This London action was brought about by the importunities of certain interests under Wentworth charters which led the British authorities to feel that the standing of various claims and the welfare of actual settlers should receive more study.

Thus, the story of the New York land grants east of Lake Champlain. It is not an edifying one, no more than the activity of Wentworth, and much less has been made of it in writings about Vermont. Much, if not all, of the uproar which developed could have been prevented if the New York governors had used more discretion.⁵⁵ The pull-

52. The confirmations probably did not reach a greater number because of the necessity of paying New York fees which were beyond the capacity of some of the Wentworth proprietors. It is to be noticed that more towns applied for such confirmation but stopped short of that step in the procedure at which the fees became due. Jones, App. J; pp. 110-111, 121-122, 232-233.

53. These were: Meath, as compensation for Clarendon lands patented under the Lydius title; New Rutland, in place of the New Hampshire grant of Rutland which had been included in the Socialborough patent; Smithfield, in lieu of Shrewsbury and part of Pittsford; and Kellybrook, in lieu of Somerset. Jones, App. J; pp. 232-233.

54. There had been an earlier order in 1767 from London, suspending New York land granting in the area. Governor Moore had observed this order strictly, but upon his death, Colden proceeded to disregard it. *Special Master, Findings*: 50, p. 249; 52-54, p. 250; 55, p. 251.

55. *Ibid.*, p. 92; *Findings*: 45, pp. 246-247; 47, p. 247; 48, pp. 248-249; 76, pp. 261-262; 78, p. 263; 79, pp. 264-265; 83, p. 267; 86, p. 270.

ing and hauling of speculative interests largely accounts for what developed. If the New York authorities had made a clear distinction between the interest of settlers and that of absentee speculators, recognizing the land claims of the former under Wentworth grants without any considerable fees, they could have avoided the headaches which developed.⁵⁶ It is most noticeable that the towns which procured New York grants were largely those in the Connecticut Valley which were the most settled towns.⁵⁷ The only well settled areas which collided severely with New York, at first, were those in the southwest, and it was here that the New York attitude resulted in threatening the welfare of actual settlers.⁵⁸ It was also here that the Allens and other New England speculative interests were able to recruit their first real support from the settlers.

Probably the greatest mistake made by New York was in the ejectment suits of 1770. These were a series of actions brought in the New York courts against New England settlers on parcels of land which fell within New York grants. The New York courts refused to receive the Wentworth charters in evidence and found against the settlers. Naturally, the settlers generally were much disturbed because it left them all in a highly uncertain status. The suits derived their deep significance, however, when coupled with the incident in the preceding year in which the Albany sheriff had attempted to eject James Breakenridge from his farm.⁵⁹ This lot was in Bennington and was also covered by the old Walloomsack patent which was revived in 1769 and partially surveyed. The incident served as a dramatic frame in which the settlers regarded the outcome of the ejectment suits. The action of the New York governor and council in 1770 in supporting the claim of the Spencer settlers under the Lydius grant of Durham as against the claimants under the Wentworth grant of Clarendon merely highlighted the attitude of New York toward the Wentworth claimants. While in this case New York supported actual settlers as against speculators, the critical aspect generally was that this had been accomplished by validating Lydius titles

56. When Governor Tryon instituted his policy of half-fee payments for confirmatory grants, support of the Allens and their party was seriously weakened, and numerous settlers expressed satisfaction with remaining under New York jurisdiction. Jones, pp. 152, 180-181.

57. *Special Master*, pp. 73-75, 92; Findings: 22, p. 238; 25, p. 239.

58. *Ibid.*, Findings: 81, pp. 265-266; 83, p. 267; 89, p. 271; 91, pp. 272-273; 92, p. 273.

59. *Ibid.*, p. 100; Finding 60, pp. 252-253.

in preference to Wentworth titles; whereas, theretofore the Lydius grants had been regarded as the most worthless of any.⁶⁰ It was this various activity around 1770 which engendered the agitation that led London to issue the order in 1771 prohibiting further land grants by New York.

So much has been made of New York land operations in the historical and pseudo-historical discussions of Vermont that their proportions have come to be somewhat inflated in the minds of Vermonters. The writer was led to believe, during early interviews in the course of this research, that the New York land grants had produced a considerable amount of confusion respecting property rights and hence would have been accountable for much lease land property having been obscured. This is clearly a much exaggerated view.

To begin with, it is found that the New York grants never penetrated deeply into Vermont, so that at its greatest extent the New York operation must necessarily have been limited in its effect. Other factors increase this. The land grants of New York were, to an even greater extent than those of Wentworth, in the hands of speculators. The major grants were directly to speculators, and a high proportion of the military patents soon found their way into speculative hands. New York speculators had even less success than the Wentworth grantees in securing settlement.

Some of the settlements which they did attempt were frustrated either by prior settlers or by the Allen men.⁶¹ Although the New York grants pretty well extended up the western margin of Vermont, most of them fell into a state of desuetude. It is found that active collisions between settlers or the Allen forces and the New York people occurred in limited, or localized, areas of the southwest quadrant of the state,

60. The Spencer case was not softened any for the contenders under Wentworth grants by the fact that the attorney for the Spencers, James Duane, took his fee in unoccupied acreage of the Durham grant. Duane had long been an outstanding New York speculator, a very active leader in the New York opposition to the Wentworth grants, and was something of a "villain in the piece" in the minds of many settlers. Jones, pp. 146-147, 317-318.

61. The most notable instance is the well-known episode at Otter Creek Falls in the vicinity of the present town of New Haven. Lieutenant Colonel John Reid had established some settlers there, but the Green Mountain Boys drove them off and burned their buildings. Another case is worthy of comment because it concerned a New York military patentee who had retained his land right instead of selling it to speculators. When he attempted to take control of his land, he found settlers on it who succeeded in resisting him and even refused, finally, to take leases from him. *Special Master*, Finding 85, p. 269.

except for the New Haven affair. Bennington and the towns immediately north of it were the sites of the principal flurries, in connection with the New York Walloomsack and Princetown patents. Other than this section, the area in and around Rutland is the only one to attain such notoriety. And to a considerable extent the men of the Grants successfully resisted attempted incursions by New York patentees in these places.

Finally, it should not be forgotten that the agreement between New York and Vermont in 1790 which settled the long standing dispute and opened the way for Vermont admission to the Union, included the provision that in exchange for the payment by Vermont to New York of \$30,000, all New York grants, other than those confirming Wentworth grants, were extinguished.⁶² After this, the only New York grants which could have been effective for our interest would have been places in which actual settlement under them was established, and these were without doubt of meager proportions. It is at least open to supposition that the lease lands could have been more extensively affected by the uncontested and hence unnoticed changes in proprietors' rights which were inserted in some of the New York grants confirming the Wentworth towns.

Despite these conclusions minimizing the direct effect of New York land grants on the fate of the lease lands, it has been thought necessary to present at such length the story of the New York activity because the policy of the New York governors produced a much more widespread and profound result in the Hampshire Grants, and in Vermont, than any stemming directly from their issuance of any particular patents. This policy may be divided into two parts for better consideration of it in this place.

The first part to be mentioned is their active insistence, from Colden on, of their authority and their issuance of land grants conflicting with existing settlements, which led to the well-known condition of ferment and turmoil in the Grants. The second aspect of the policy was their failure to create any systematic or effective establishment of government in the region. Writings on Vermont are prone to disregard, or to mention only incidentally, the lack of government in the Grants. But the fact is that over a considerable period of time, from 1750 when Wentworth's first charter was issued, until well into the years of the Revolu-

62. *Statutes of the State of Vermont, Revised* (1787), pp. 259-261; *Special Master, Findings*: 275, pp. 397-398; 276, pp. 399-401.

tionary War, no general governmental authority was in effect in the Grants.⁶³ New Hampshire made no effort to administer the region. Wentworth's charters gave to the proprietors authority to levy a tax on themselves and their settlers until the town should be divided and organized. The New Hampshire charters likewise placed on the proprietors responsibilities such as road development. It would have been assumed that the towns so granted would be subject to provincial law and royal authority through the province. No evidence could be found, however, that provincial officials ever appeared in the Grants.⁶⁴ New York, as has been observed, was vigorous in its insistence on authority over the region. But New York's measures for making this mean something were few and not effective.⁶⁵

New York did divide the region into four counties, two to the east of the mountains and two on the west, the latter of which were extensions of adjacent New York counties, but this amounted to little more than cartography.⁶⁶ The counties were not staffed with officers, and even the attempt to establish judicial authority and hold court in the counties came to the disastrous end of the "Westminster massacre," which was in essence no more than physical resistance of a group of people in the Connecticut Valley to the sitting of the court and the subsequent effort of the New York sheriff to take the courthouse from them.⁶⁷ Some constables and justices of the peace were appointed but were not supported on those occasions when the execution of their duties aroused the ire of their neighbors. In the west, this condition developed such acute difficulties that the New York Assembly finally passed a riot act in March, 1774, against such actions as opposition to or obstruction of an officer.⁶⁸ This was aimed at the Allens and their crew, who were the violent oppositionists, but it indicates the degree of the failure of New York authority. This act soon received a reply. An assembly of New

63. *Special Master*, pp. 93-94, 100-102, 105, 107, 112, 127-129; Findings: 45, p. 246; 71-73, pp. 258-259; 77, pp. 262-263; 83, p. 267; 84, p. 268; 91, pp. 272-273; 99, p. 285; 106, p. 289; 128, p. 306; 263, p. 391.

64. An exception to this may be seen in the rare visits of the Surveyors-General who came to the Grants merely to check up on the King's rights to timber for masts for the Royal Navy.

65. *Special Master*, pp. 112-113.

66. Jones, pp. 255-256, 276; Collins, *Vermont*, map, p. 74; *Special Master*, Findings: 57, p. 251; 58, p. 252.

67. *Special Master*, Findings: 104, pp. 287-288; 105, p. 288.

68. New York, *Colony Laws, 1774-75*, pp. 33-38, cited by Jones, p. 327. Cf. Slade, *State Papers*, pp. 42-48; *Special Master*, Finding 91, pp. 272-273.

Hampshire claimants at Manchester voted "that mere acceptance of a New York commission should constitute the recipient a public enemy."⁶⁹

It must be admitted that New York had on its hands an onerous problem of government. It would have been difficult under the best conditions, even if the New Yorkers had appreciated their task. The large majority of the settlers in the Grants had come from other New England provinces and were accustomed to the government of that area, with its stress on town responsibility and locally selected officers. New York was a province of much more centralized government, including a much greater proportion of appointive officials. The task of fitting the people in the Grants into the New York organization thus presented difficulties, even without the more particular antagonisms which developed.

The more populated of the towns developed town government, but even this, no doubt, was primitive in response to the primitive social conditions prevailing.⁷⁰ There was no agency in a position to knit the towns together into any larger jurisdiction. The first agency which can be so regarded was the pre-revolutionary series of committees of safety which developed in the Grants, as elsewhere in the colonies, and they were distinctly limited in their field of activity.⁷¹ The series of conventions which were held at various places in the Grants were the next manifestation of government.⁷² But it was not until the declaration of Vermont independence and the adoption in 1777 of the first state constitution that the region can be said to have had any general government.⁷³

So we see a period of more than a quarter of a century during which the region was for practical purposes without the guiding or controlling influence of a general government, or any government except what each town may have devised. It was a period in which some settlement was occurring, at an increasing tempo, and in which avidity for land developed sharply. It included one war and ended during another war, both of which subjected the region to campaigns and abuses, and it was the

69. Jones, p. 333; *Special Master*, Finding 92, p. 275.

70. *Special Master*, p. 107; Findings: 45, p. 246; 112, p. 293.

71. The lack of unity of thought in Vermont is illustrated by the existence, for a period of time, of two sets of committees of safety which were in opposition; one adhered to the New York people, and the other represented the leaders in the Grants. The latter finally demanded that the former cease operations. *Ibid.*, p. 110; Findings: 117, p. 297; 130, p. 310; 132, p. 313.

72. *Ibid.*, pp. 104-111; Conclusion 9, p. 485.

73. *Ibid.*, pp. 112-113; Conclusions 10, 11, p. 486.

period of the fifteen years of strife over conflicting land claims, culminating in the turmoil engendered by the Green Mountain Boys.

Such conditions cannot but have led to irregularities respecting land. Surveying, recording of land records, proper divisions into severalty of town grants, correct location and size of parcels of land, the presence of squatters, all would have been well nigh impossible of control or adequate administration. And these natural conditions were aggravated by the presence of elements, such as the Allens, who displayed some irresponsibility about the niceties of land titles. Stubbornness on the part of settlers in maintaining their locations would have been enhanced both by the rigors of establishing a home in the wilderness and by the necessity of their presenting a united front to the danger of ejection by the New Yorkers. It would be small wonder if the identity of some lease lands became lost or clouded under such conditions.

Moreover, these early conditions had an effect long after they ceased. It will be seen presently that the early years of the Vermont state government reflected them. Even today much property in Vermont lies under title records so obscure as to be startling to people from other sections of the United States.

For fourteen years, following 1778, Vermont constituted a separate independent republic for all practical purposes.⁷⁴ This assertion would be viewed with a critical eye by some. The status of the region, as well as the merits of the men who dominated it during that period, have been the subject of much contentious writing and oratory. There are those who champion the position that Vermont was in all respects a full-fledged and rightful member of the family of nations, surrounded by greedy neighbors exerting themselves to steal away the birthright of liberty from the men of the Grants. Others have denounced the infant Vermont as a rebel which had without justification set itself apart to the injury of decent and innocent parties. The leaders in the move have likewise been both eulogized as wise and sturdy sons of liberty and heaped with opprobrium as knaves intent only on improving their own fortunes. In short, the position of Vermont and its leaders was in much the same ill-established status as that of the American colonies, on a larger scale, during the Revolution.⁷⁵

The merits of the case are not of interest in this study. The back-

74. *Ibid.*, pp. 122, 127, 221; Findings: 147, pp. 319-320; 213, p. 360; 259, pp. 387-388; Conclusions 10, 11, p. 486.

75. *Ibid.*, Chapter VII.

ground has been demonstrated. But the very fact of the divergent views and the diverse stresses which they created are of interest because of their influence in the further political and social development of the region. Briefly, the pressures exerted on the Vermonters⁷⁶ contributed to continuing turbulence and ill-defined administration of government and resulted in further possibilities of confusion for the lease lands.

Bearing in mind that no judgment is offered as to the rights and wrongs of the matter, it must be admitted that the men who undertook to strike out on their own and maintain their own establishment of government were subjected to intense and varying forces which precluded a calm, well-ordered and systematic development of their position or their state. New York State exerted constant pressure for a resumption of its position of authority. At times New Hampshire and Massachusetts laid claim unsuccessfully to portions of the area. Congress was for the most part unwilling to look with favor on Vermont and at times took steps indicative of a positive adverse attitude, as when it advised the Vermont leaders against making any land grants pending a determination of Vermont's future.⁷⁷ To complete the circle, the British stood to the north, with the Champlain Valley an inviting route for their campaigns.

The internal situation was not much more cheerful. There was fear of the British and uncertainty of the intentions of the Colonies, there was little wealth or money and not too much food. And there was a significant lack of unity in support of those who had assumed leadership.⁷⁸ As elsewhere in America, the Grants had its British sympathizers, but here the situation of opposition was more complicated because the Grants also contained settlers who were unsympathetic to the establishment of a separate state and some who, though they might accept that idea, were not favorably inclined to the group which had engineered the movement and taken control of it. In at least one instance it was thought necessary by this leadership to subdue such internal opposition forcibly.⁷⁹ Those in control appear also to have resorted to some little con-

76. *Ibid.*, pp. 116, 122, 129, 146; Findings: 134, p. 314; 147, pp. 320-321; 169, p. 333; 170, p. 334; 243, p. 376.

77. Slade, *State Papers*, pp. 112, 117; Hall, *Early History of Vermont*, p. 299.

78. *Special Master*, pp. 113, 114, 115, 127; Findings: 125, p. 303; 127, p. 305; 129, p. 309; 133, p. 314; 137, p. 315; 143, p. 319; 161, p. 329; 163, pp. 330-331; 165, p. 331; 167, p. 332; 178, p. 338; 180, p. 339; 182, p. 339; 183, 184, p. 340; 186, 189, p. 341; 234, p. 371; 235, p. 372; 237, p. 373; 241, p. 375.

79. Slade, *op. cit.*, pp. 176-177, 184, 185, 198-234, *passim*; Collins, *Vermont*, pp. 123-125.

fiscation of "tory" property. For purposes of rhetoric, Ira Allen and his colleagues lumped all the variants of their opposition under the label of tories. But this was so evident a stratagem that these incidents produced untoward reactions in the Congress and, no doubt, contributed some to delaying favorable action respecting Vermont's admission to the Union.

Only those aspects of the period of immediate concern here will be reviewed. It has earlier been remarked that the new government embarked at once on a program of land granting.⁸⁰ This continued at a rapid rate so that within a three-year period most of the state had been filled in with town grants or individual grants. Within ten years or less land granting remained only as an occasional incident, consisting of filling out spots found to have been left open by earlier survey estimates, regrants, and changes in town lines to accommodate various parcels of land. (The biggest years in the list of post-revolutionary charters were 1781 and 1782.) So it may be seen that this activity was carried out hurriedly and before it was possible to have developed any accurate knowledge of the ground, either in respect to those portions covered by Wentworth grants or the open portions then being chartered.

A condition which probably stirred up some opposition within the Grants to the new government was that the land operations were to a considerable extent in the hands of men known for their speculative interest. Ira Allen was commissioned to do surveying, and this did not lessen the suspicions of some. Thomas Chittenden, the governor of the new state, without question, performed largely as its chief executive during those stormy years and may well deserve all the eulogies which Vermont writers have inscribed in his honor. But it is evident that he was, to put it mildly, somewhat free-handed in his disposition of state lands.⁸¹ Other men of prominence then are known to have been intimately involved in land distribution.

A significant segment of the personnel dominating the region came from the ranks of those who had fostered the acute stages of the quarrel with New York and had the reckless audacity and determination which spurred them on to accomplishing the separation from New York.

80. *Supra*, p. 2.

81. On at least one occasion he was even subjected to official criticism. See Vermont, Secretary of State, MSS State Papers, vol. 18, p. 71, for records of the Assembly for Oct. 20 and 23, 1788. Hereafter cited as MSS State Papers. He, himself, was a proprietor in at least 42 towns granted by the Vermont legislature. Woodard, *Town Proprietors*, p. 160; Slade, *State Papers*, pp. 535-536.

It could not be expected that those men would be inclined to carry out their own land granting activity in any cautious or highly organized way, nor to exemplify for the frontier settlers of the Grants a spirit of respect for systematic administration of land holdings.

Another type of influence must be included. This was the relatively primitive conditions of government and administration which were an inevitable concomitant of the circumstances under which the government was erected. There was in the Grants a critically small proportion of people with any high degree of education and even fewer folk with any experience or other preparation which would have acquainted them with the intricacies of operating a state government. It is a well-known fact that such a condition was general throughout the American colonies when they decided to take over from the British the responsibilities of government. But Vermont was far and away in a more acute situation from lack of such personnel than other parts of the colonies. The men of the Grants were small frontier farmers, men who, for the most part, had faced the rigorous task of opening the wilderness for want of better opportunities in the colonies from which they came. Men with any appreciable wealth were rare indeed; there were no wealthy, educated, leisured Washingtons, Jeffersons, Adamses, Hamiltons; no extensive libraries in Monticellos or Beacon Hill houses. Moreover, these people had not recently had the direct contacts with provincial governments which had, in other colonial places, at least given some of the people an opportunity to observe the functioning of government. They had not been sitting as members of colonial assemblies, nor had they been rendering critical judgment on executive or judicial authorities as had the Sam Adamses of the colonies. Rather, they had either been more or less passively isolated from governmental affairs, as in the Connecticut Valley towns, or engaged in tumultuous opposition to governmental authority. This is not intended as adverse criticism; it speaks well, contrariwise, for their courage, tenacity and ingenuity that they were able to surmount such obstacles. But it does mean, for the purpose of this study, that one cannot expect to find smooth, polished acts of legislation nor well organized and comprehensive administration or records thereof. Furthermore, it means that under the then existing crisis conditions, the chance was even smaller for there to be calm, studied and well digested programs of government.

The physical manifestations of government itself provide a nice illustration of this primitivism and also offer another possible influence

for an unclear status of such matters as the lease lands. Mention will be made of the way in which the state treasurer's records were handled.⁸² Few were the men who could devote more than spare time to their responsibilities as officers of the state. Indeed, the very seat of government was for a time itinerant. It was not until 1808 that a permanent location for the state capitol existed. Prior to that time the meetings of the legislature were convened at various places in the state.⁸³ It needs no great effort of imagination to conjure a picture of what could happen to state records under such circumstances. William Slade, Jr., of Middlebury provided about the only fixed point and firm anchorage for the business of the state. As secretary of state (1815-1823) he maintained the files of legislation and other such records as the proceedings of the governor and council and the censors. And in later years he made some compilations of these records. The student of the Vermont government of those days is heavily dependent on Slade's *State Papers*.

Two illustrations of the relatively poorly developed condition of state affairs may suffice to demonstrate the effects of such influences. It has been remarked earlier that in the present study it was found necessary to scan the legislative acts page by page.⁸⁴ Slade, in his compilation of state papers of 1823, spoke urgently on this situation, and from his exhortation one can see that the somewhat willy-nilly process of legislation had by then assumed serious proportions.⁸⁵ The second example comes from the experience of this research. In the work of identifying

82. *Infra*, pp. 85-86.

83. Windsor, Bennington, Westminster, Manchester, Norwich, Rutland, Charlestown, N. H., Newbury, Castleton, Vergennes, Middlebury, Burlington, Danville, and Woodstock.

84. *Supra*, p. 4.

85. The early institutions of a government are peculiarly liable to be lost sight of, in the progress of improvement. Superseded by new systems, they are supposed to have lost their value, and are permitted to pass into oblivion. This has been, in a peculiar sense, true of the original constitution and laws of Vermont. The circumstances under which the government was formed, were eminently calculated to give to its institutions an imperfect, unsettled character. At the expiration of seven years, the constitution was revised and altered; and at the end of the next septenary, was again revised, and adopted in the form which it still retains. In the year 1787, the whole system of laws was revised, and formed into a new code, and the statutes passed previous to that time—a few only excepted—were repealed. Thirty-five years only, have elapsed since that revision, and not a single entire copy of the laws passed previous to that time, is to be found. Even the office of the Secretary of State has not preserved the laws passed during the first year after the organization of the government.

Intro., pp. xv-xvi.

and classifying the town charters for purposes of identifying the reservations of public shares, the charters issued by the State of Vermont were found to present infinitely more trouble than those earlier ones emanating from Wentworth's offices.

These are the principal aspects of the period of the independent republic of Vermont which are considered as having had an influence on the nature of the development of the lease lands. The climactic event, of course, was the agreement arrived at in 1790 with New York which opened the way for the admission of Vermont to the Union, but for this study it is significant because it was the instrument by which the New York grants of land were extinguished and external influences on the lease lands ceased.

Established and recognized statehood commenced for Vermont in March of 1791 upon her admission to the Union as the fourteenth state. At that point questions of her lands and the source of rights thereto were at an end. From that point forward any problems arising would be domestic to the state, between individuals or between individuals and the state. Consequently, the century and a half since that event need not detain us long. No more is needed than that amount of information which will furnish a generalized picture of the course of development of the state and thereby provide an awareness of any actions or influences which might have played important parts in the development of the lease land system. Of some such elements, only mention will be made here in order to give cohesion to the story of the process of development; they will be given more detailed and adequate treatment at various points in later chapters in which their values are better to be elucidated.

Essentially, one may say that with the admission to the Union we come to the close of the dramatic aspects of the development of Vermont. Since then the state has been without crises and has avoided any conditions of turmoil such as had afflicted it. The story of Vermont is one of quiet stability in which there has been a mild, slow, but steady, development. There have been periods of strain, as during the War of 1812, the Civil War, and the great depression of the 1930's, but these have not been of an intensity to be described as critical. There have been periods in which one or another part of the state has seen an upsurge of activity and prosperity; the period during which lumbering loomed large, the years of greatest prosperity in the marble and granite quarries, the Addison County boom in the raising of Merino sheep are ex-

amples. Basically, however, it is a picture of farmers on relatively small farms, with villages as their community centers. In the long run picture, the fluctuations in the price of milk and the consequent size of the monthly milk check are of more value as a prime influence in the state than have been the episodic economic incidents. Metropolitan development has been slight; not more than some half-dozen communities have grown to the stature of small cities.⁸⁶ Industrial development has been extremely limited. There are a few such activities of importance, but they are not of a size or influence in the state which might be expected by people from other sections. It has happened that the industries of Vermont have had a fame quite disproportionate in its extent to the actual size of the concerns.

There have been population changes in Vermont. But, again, they have had no dramatic quality; they have been reasonably slow and quietly absorbed so that they have had none of the shock force on social organization that has attended great and sudden influxes and departures of people in other regions. The census figures delineate sharply how mild have been the fluctuations.⁸⁷ Internally, there has occurred a shift of population which has moved the center of gravity from the south half of the state to the north. There has been a gradual rise in the average age level of the population which has largely resulted from a tendency of young people to emigrate, and this fact is sometimes given credit for the continuing conservatism of the state through the stresses of the twentieth century.⁸⁸

Probably the most profound population change has been the arrival over a period of time of a significant number of people of non-anglo-saxon extraction.⁸⁹ This movement has been composed of two distinct and unrelated elements. One was the influx of foreigners as industrial labor. This has essentially been limited to the granite and marble quarries, centering around Barre and Rutland respectively. The other element has been an infiltration of French-Canadians who have come in

86. The largest, Burlington, can claim little more than 30,000 as a population figure.

87. 1791—85,499; 1800—154,465; 1810—217,895; 1820—235,966; 1830—280,652; 1840—291,948; 1850—314,120; 1860—315,098; 1870—330,551; 1880—332,286; 1890—332,422; 1900—343,641; 1910—355,956; 1920—352,428; 1930—359,611; 1940—359,231. Figures from the United States Census Reports.

88. Herbert E. Putnam, "Vermont Population Trends—1790 to 1930 as Revealed in the Census Reports," *Proceedings of the Vermont Historical Society*, New Series, IX, No. 1 (1941), 25-26.

89. *Ibid.*, pp. 14, 16, 17, 19, 21-22.

from Quebec and settled on farms, in many instances farms which have been abandoned by the Yankees but are worked by the Frenchmen with their larger families and acceptance of a somewhat lower standard of living.⁹⁰ The addition of these foreign elements, it should be remarked, has resulted in a rather important increase in the growth and influence of the Catholic Church. But, as with so much else in Vermont, the change has been so gradual and unattended by drama that the foreigners and the priests have been accommodated within the framework of the older anglo-saxon protestant community without great stress, and they have had no appreciable influence toward re-orienting established political and social customs.⁹¹

Of far more significance for the lease lands than the general demographic developments are the moving about of individual families and the land acquisitions of lumber companies. Despite the stability displayed by over-all figures, there has been a surprisingly large amount of movement of individuals and families. Families sometimes have died out locally as the younger generation has forsaken Vermont or the family has failed to procreate. And families have moved away. The latter activity, as could be expected, has had a variety of cause and procedure. Relatively inefficient farms have been abandoned or have suffered mortgage foreclosure. Moves have sometimes been made to what looked to be more desirable farm locations. Some families have moved from the farm into town, etc. Whatever the circumstance, it is such incidents which are pregnant with possibilities for effects on the lease lands. Radical changes in ownership are opportunities for loss of identity of lease lots. The forest industries—lumbering, and pulp for paper and plywood—have posed a special problem for the lease lands. The elements of this problem are the relative inaccessibility of the land in which the

90. One other isolated incursion of foreigners is worth notice. One town has a settlement of Finns who have maintained a relative degree of solidarity. This has an interest here because it involved a small crisis over the lease lands. The Finnish colony got together and decided not to pay any more rent on its S. P. G. lands because they believed the Diocese was not sure of the location of the lots. Fortunately, the land agent for the Diocese at that time could speak some Finnish, and he was able to convince the Finns that they had to pay the rent. Statement by J. F. Wilson.

91. In illustration, the March, 1946, town meeting in Montpelier voted funds for the operation of school buses, including the provision that the parochial schools should be financed in their school buses on the same basis as the buses operated for the public schools. The interesting fact of the matter is that the action was taken without any of the public debate or excitement which has attended similar proposals elsewhere in the United States. See various issues of the Montpelier *Argus* during Feb. and March, 1946.

lumber companies are interested, the issue of stripping versus harvesting timber, and the problem of a satisfactory mode of payment of lease rent. These are to be elaborated in Chapter VII when the lease lands come under immediate direct analysis.

As to the activities of the state government affecting lease lands, the period since the admission to the Union may be characterized as one of piece-meal fumbling and irresponsibility, induced by failure to recognize the magnitude of the lease land system as a political institution. Once the program of chartering was rounded out, the state government appears to have lost sight of the reservations of land which were established in the Wentworth charters and extended in its own charters. That is to say, the lease land system has been lost sight of as an instrument of public policy for which the legislature, having established the system as a major phenomenon, might well have felt a continuing sense of responsibility respecting the development of the system and its utility.

Relatively early, the legislature assigned the college and grammar school shares, the direct control of which had been in its hands.⁹² The effort to confiscate the glebe and S. P. G. shares was likewise early in the period. With the exception of the report on lease lands rendered in 1878, these are the only major efforts of the state government up to legislation passed in 1935 and 1937.⁹³ Otherwise, one encounters only an intricate mass of legislative acts, interspersed with judicial decisions, relating either directly or indirectly to localized situations. Land tax acts, acts changing town lines and specifying the disposition of lease lands involved, acts concerned with statutes of limitations, and other topics of legislation have attempted to handle particular problems surrounding lease lots, but no general legislation designed to maintain the lease lands as effective instruments of policy is found up to 1937. The courts likewise have been particularistic in their treatment of the lease lands. Gradually, the lease lands have become more and more obscured in the eyes of the state officers.

This survey of the development of Vermont should be rounded out

92. The first grammar school which received definite grant of the grammar school lands was the Caledonia County Grammar School at Peacham. *Laws of Vermont, 1794-1796*, 1795, p. 29. The same year, the selectmen of each town were directed by the legislature to lease out for not more than ten years any lands not already leased by the grammar school trustees. *Ibid.*, pp. 14-15. The college lands were granted to the corporation of the University of Vermont by its charter in 1791. *Laws of Vermont, 1791*, pp. 29-30.

93. *Infra*, pp. 131-135.

by a brief description of political organization in the state at the present time, as related to the lease lands.

State-local relationships must be considered briefly, as these have had their part in what has happened to the lease lands. Vermont has continued along the traditional path of New England governmental organization with the emphasis on decentralization and local determination of affairs as far as is at all possible. The New England town form has continued largely undisturbed. Below the state there are fourteen counties organized. These are no more than the shadow of county government as it exists elsewhere.⁹⁴ The chief function of the county is as a judicial area, being the jurisdictional unit for the session of the superior court. It is also the unit for election of the upper house of the legislature. Outside of the court records, it performs none of the function of recording which is so important a use of the county elsewhere in New England. The only immediate concern of the county as to lease lands is that previously discussed wherein the county boards supervise and administer unorganized areas in some of which public shares were reserved, and the fact that the grammar schools for which lands were reserved were to be schools on a county basis.

Incorporated cities exist in Vermont on a small scale, there being a total of eight of them.⁹⁵ This development has apparently been basically a matter of the same movement which in other sections of the country is referred to as city-county consolidation or separation; a move to divorce the "metropolitan" portion of the community from the surrounding rural area, in this case from the remainder of the town. Some changes of organization occur, including the substitution of a mayor and board of aldermen for the board of selectmen. But such changes are not of essential significance: even the town meeting continues to function. City incorporation has involved some of the lease lands because such separations have necessitated a distribution of either the lands or their avails between the city and the remainder of the town of which it had been a part. Many of the villages are incorporated and thus have a vil-

94. For example, Addison County, which is one of the more important counties economically, with a comparatively large area (756 square miles) and a 1940 population of 17,944, had as its total receipts in 1946 the amount of \$3,903.16. Its total disbursements were \$3,968.54; it had on hand at the end of the year \$434.62 and a debt of \$500.00. The proposed tax for 1947 was 2¢ on the Grand List. *Vermont Year Book, 1944-45*, p. 21; *Addison Independent*, Feb. 28, 1947.

95. Barre, Burlington, Montpelier, Newport, Rutland, St. Albans, Vergennes, Winooski.

lage meeting, village officials and village administration, including a village tax. But the distinction between the incorporated city and the incorporated village is that the latter remains a part of the town in which it lies and is subject to all the features of the town government—the village government just adds another layer of administration by which to conduct additional or intensified functions not needed by the more rural parts of the town.

The primary unit of government in Vermont is the town; and for our purposes we may include in this category the cities.⁹⁶ And in most respects it is also the most important unit of government. Even though the state government has increased its functions and interests, it is still dominated by the towns by virtue of the organization of the lower house of the legislature, there being one member for each town or city. Thus the town government holds the spotlight in Vermont affairs and particularly so in this study. Of the nine categories of lease lands, three are administered by private institutions, five have fully fallen to the towns for control and administration, and a sixth has, partially. The partial exception is the share reserved for the first settled minister, and it has undergone a variety of fates.

The state government is not significant in a study of the lease lands. It has to a remarkable degree abdicated any interest in them or control over them. Of the major state administrative divisions, only that of the Commissioner of Taxes has even the semblance of data on them, and this is neither adequate nor reliable. Three state departments have functions which tend to bring them into direct contact with the lease lands: the Water Conservation Board; the Highway Department; and the Forestry Service. All of these carry on activities which may result in state acquisition or utilization of lease lands.

As a sort of historical footnote, this chapter may well close by remarking that once again an outside jurisdiction of government is interested in the lease lands of Vermont. The federal government during recent years has developed a federal forestry service reservation in the state and in the process has acquired some lots of lease lands.

96. School district organization will be described in Chapters VI and VII during the explanation of lease lands reserved for educational benefit. The schools properly do not administer lease lands but depend on the towns for this.

Chapter III

GENERAL CIRCUMSTANCES AFFECTING THE LEASE LANDS

During the earlier stages of this study, it had been the hope to present a relatively clear and complete picture of the contemporary situation of the several grants of lands and the status of the particular lots or parcels. As the study proceeded, it became apparent that such a program would be quite beyond the realm of possibilities. Finally, fuller acquaintance with the whole problem made it apparent that the proper scope of the present study should be to present the existence of the lands as a political and administrative phenomenon and, as a part of such presentation, to indicate the confusion in which they exist, together with the impossibility of any short or easy road to clarifying their status. Mr. Erwin M. Harvey, for many years Commissioner of Taxes of the State of Vermont, made a statement pertinent to the latter aim. He said that he had been approached, a few years previously, by two members of the legislature. They felt some concern about the lease lands and asked his opinion of the situation. He told them that he agreed entirely with them that the lands needed a thorough study and that he would be agreeable to their introducing a bill to the effect that the Commissioner of Taxes should conduct such an investigation. But only on condition that they specify in the bill that he should have at least five years for the job and a budget of at least \$5,000.00 a year for it, so that he could hire experts as a staff, to include a land title attorney, a surveyor, etc. At that time, the writer was somewhat skeptical of this extremely pessimistic attitude, particularly so because of the general conservatism of thinking which Mr. Harvey had exhibited in previous conversations. However, he has become converted to this position through greater familiarity with the situation.¹

1. It is of interest to note that Mr. Harvey was well acquainted with the problem of the lands, both generally and particularly. He was in the office of the Commissioner of Taxes for twenty years. Furthermore, he was for forty years a member of the Trustees of the Washington County Grammar School, being the President of

Mr. Harvey had attempted to bring together and make available to the state government some information respecting the lands. Vermont law provides for a quadrennial report from the towns to the state on assessed property values in the state.² He was dissatisfied because the town listers were not listing exempted lands as required by the law. He revised the form of the quadrennial appraisal report, adding first a Schedule B and later a Schedule C to the form. These schedules respectively called for a listing of all lands sequestered for public, pious and charitable uses and paying an annual rent, and those so sequestered and not paying an annual rent. He stated to the writer that the results of this form of report had not been to his satisfaction at all. Additional information has been brought out, but it is fragmentary and not trustworthy as to accuracy.³

The writer added to Mr. Harvey's dissatisfaction by pointing out to him that the form itself involved some confusion. As it is worded, it does not segregate the lands under consideration in this study from other land devoted to "public, pious and charitable uses." This had not previously occurred to him and thus forms a nice example of the need for a clearer understanding in Vermont of the lands now under study. The distinction between lands sequestered from taxation for "public, pious and charitable uses" by virtue of the grants in the town charters, and other such sequestered lands, as for example, those donated by individual benefactors, is of considerable consequence to the Commissioner of Taxes and other agencies of the state. The latter type of sequestered lands is not a responsibility of town officials so long as their use is for the specified purpose. On the other hand, town officials are charged with very definite administrative and fiscal responsibilities for several classes of the lands provided for in the town charters.⁴

The existing confusion concerning the lease lands can be attributed to the combination of a variety of influences. First, in point of time, was the set of circumstances under which the lands came into being as grants to the several beneficiaries, as was described in the previous chapter. In the case of the four reservations contained in the charters

the board for seven years. In this capacity he was directly concerned with the administration of one group of lease lands.

2. *P. L.*, ch. 33, sec. 592; ch. 35, sec. 638.

3. In the Quadrennial Abstract of 1942, for example, 71 towns failed to fill out Schedule B, and 91 towns either failed to fill out Schedule B or C, or both, or made entries so defective as to be beyond exact interpretation.

4. *P. L.*, ch. 146, secs. 3536, 3537, 3538 and 3539.

issued by Benning Wentworth, there is to be recognized immediately the contest between the governments of the Provinces of New Hampshire and New York respecting jurisdiction over the area lying between the Connecticut River and Lake Champlain. During this period of contention one finds conflicting land grants being made; others being made which were thought, or claimed, to be conflicting, although not so in fact; further confusion due to redesignations, upon New York confirmations of Wentworth grants; confusion in cases of re-grants by Wentworth of earlier grants in which the passage of time or commercial transactions led to new lists of proprietors.⁵ All of this produced uncertain status of the shares originally reserved for public purposes. It should be noted, too, that the Wentworth charters fell into two time groups, one occurring in the early 1750's and the other not until the 1760's, and this likewise allowed of confusion as to locations.

During all of this period, and, in fact, until after the conclusion of the Revolutionary War, the area then known as the Hampshire Grants and now comprising the State of Vermont was distinctly "frontier" country—much more so than areas further west. It was largely unknown except by frontiersmen, hunters, trappers and so on, and those who had been across it in the course of the military campaigns. Except for the

5. A case in point involved the New York grant of the town of Kent. Kent had been granted to one Rogers and associates in 1770, and Rogers then acquired title from all the associates. In 1778 Kent was confiscated on the grounds that Rogers was a royalist, and in 1780 it was granted as Londonderry, with three men appointed as trustees to dispose of it "for the use of the State." In 1795, Rogers' son petitioned the legislature that he be conveyed, as heir, all the lands in Londonderry then unsold or unappropriated. In 1795, the Assembly passed an act directing the trustees to so convey, excepting public rights, and a quit-claim deed passed from the trustees to Rogers' son. In *Davis v. Moyles*, 76 Vt. 25 (1902), the court refused to allow the claim of Rogers' son as heir or to accept the claim that Rogers' land had truly been confiscated, but it did hold that title might legally be based upon a New York patent granted after New York was given jurisdiction by royal decree. To complicate matters even more, in 1795 the legislature had formed part of east Londonderry into a separate town—Windham—and in 1797 had laid the boundary line up "Glebe Mountain" in such a way as to annex part of Windham back to Londonderry. In 1806 the legislature passed an act to straighten out the public shares between the two towns, having found that the committee of the original town of Londonderry for pitching the public lands had made no record of its pitches, although the lands had actually been located and fell partly in Londonderry and partly in Windham. *Laws of Vermont, 1794-1796*, 1795, pp. 11, 65-66; *1796-1798*, 1797, pp. 21-22; *1802-1804*, 1804, pp. 16-17; *1805-1807*, 1806, pp. 104-105. For a map of conflicting grants of New York and New Hampshire see Edward Conant, *Geography, History and Civil Government*, 7th ed. rev. by Mason S. Stone (Rutland, 1925), facing p. 139. Hereafter cited as Conant, *Vermont*.

small areas in the southeast—the lower part of the Connecticut Valley—and the southwest—the so-called Bennington area which had reasonably easy contact with Albany—it was not readily accessible.⁶ The combination of topography, dense forest growths and lack of roads brought this about. The area was not on the road to anywhere except Canada, and even in that respect the west bank of the Hudson and Lake Champlain offered a preferable route.⁷ The very closeness to Canada may be regarded as of interest to us because the fear of invasion from Canada had a retarding effect on immigration into the region with the result of long-continued absentee ownership. Moreover, it meant that among earlier settlers there tended to be a preponderance of adventurers who flaunted the risk and of squatters who came here simply because their poverty drove them to a place so wild that they could hope to establish themselves on land without purchase payments. It will be conceded that neither of these classes of people would be overly careful of encroachment on the rights to the lands granted for church and school benefits.

Absentee ownership has been briefly mentioned in the preceding paragraph, but should be accounted an important factor in the confusion of the lands. The Wentworth charters specifically violated both the phrasing and intent of the King's instructions of 1741. These were to the effect that charters for towns would be granted only when fifty or more individuals were prepared to settle on the land.⁸ However, customarily the proprietors listed in Wentworth's charters for the Hampshire Grants were individuals who had no intention of settling. Indeed, it appears that very few of them ever even visited the region or had such intention. They were concerned with receiving grants of land which could be sold to settlers other than themselves. This view is borne out, furthermore, by the general failure of such grantees to make any improvements of any kind, even to the development of roads. Just enough

6. It must be remembered that during this period of history, New York and not Albany, was the focal point of British provincial government in New York, and in those days the City was a long way from the Green Mountains. Likewise with New Hampshire, Portsmouth being much further removed in both space and thought than the present capitol at Concord.

7. It can be said that this condition still exists and is of influence on Vermont affairs generally. The state lies off all important routes, and this undoubtedly is an important contributing factor toward the continued quiet, rural, "small community" life and viewpoint prevailing. This is of interest in the present study because of its influence on administrative ways.

8. *Laws of New Hampshire* (Manchester, 1904-05), II, 607-652, cited by Jones, p. 23.

surveying was done to make possible the relatively few early divisions into severalty of the granted lands. Consequently, the actual land was as nebulous in their minds as the "paper profits" so pleasing to many people during the hey-day of the stock market operations in 1929.

Of all the absentee grantees, those concerned with the lands granted for religious and educational purposes were the most absent. Both the glebe for the Church of England and the share for the S. P. G. were of concern only to clerical officials in London, with no agents in the neighborhood of the lands. The other share for religious purposes, for the first settled minister, obviously could have no champion until there should be such a settler or until a church congregation should develop with an interest in inducing the settlement of a minister. The same condition holds true for the share allotted to the benefit of a school. Consequently, none of these shares profited by the watchful eye of interested parties. They were not represented at meetings of the proprietors nor at the drawings for lots at the time of land divisions. The wording of the charters, taken in conjunction with the accepted practices of land division, would lead one to expect that the beneficiaries of the four public shares were to be an even basis with the proprietors in the luck of the draw. There are indications, however, that with no sponsors present to protect their rights, there was some tendency to locate these rights of land in the less desirable parts of the towns. There appears to be an extraordinarily high proportion of the lots located in the more mountainous parts.

Another result of the absence of sponsors or agents of the public lands appears to have been that such lands were occasionally used as the way out of otherwise insoluble conflicts of land claims. Such conflicts could arise as the result of overlapping grants from the governors of New Hampshire and New York, from the inadequacy of early surveying, from the loose and carefree ways of land speculators, and from the presence of squatters unwilling to move upon the arrival of *bona fide* purchasers. (In this respect the history of land settlement in Vermont is of a piece with the process of settlement of large areas of the United States.) It is a generally accepted view in Vermont among those aware of the lands that in some instances of such conflicts the issue was resolved by leaving a settler on the lot at issue and tacitly permitting the other claimant to move in on what had been regarded as land pertaining to one of the public rights. Documentation of this assertion obviously would be exceedingly difficult and is an example of the reasons why

Mr. Harvey felt that five years and \$25,000 would not be too much for the job of clarifying the status of the lease lands. One reason for the difficulty of such documentation is that any such incident obviously would be settled as quietly as possible. Another is that among Vermonters, then as now (with the rather lurid exception of Ethan and Ira Allen and their associates), there is a distinct reluctance to air quarrels and squabbles, much less to put them into black and white.⁹ Finally, lots have been "lost" in other ways, as will be noted presently.

Land speculation should probably be assigned primary place as a factor in the present confusion surrounding these lands. At the time at which Wentworth made his first charter grants west of the Connecticut, land speculation was becoming important, and it rapidly became more and more significant in the affairs of the period. As is generally known, this was a time when there was some increase in wealth in the colonies, but in which British colonial policy inhibited investment in industry or commerce. It was also a time when money in the colonies was uncertain in value and erratic in quantity. Hence, there was a positive urge to turn toward land as a medium of enterprise. This all coincided with a progressive decrease in the area of available land in the more settled New England colonies and in New York so that the wild area between the Connecticut River and Lake Champlain offered the only remaining unpatented land of great extent. Indeed, the New York authorities were energized in their struggle with the Wentworths of New Hampshire for

9. This has been noticeable all through the course of this research. In reading the secretaries' records of some of the groups dealing with the lands, one will come upon the development of a disagreement. Of a sudden, the minutes will simply clamp down on any further elucidation. One will find simply a brief statement that so and so tendered his resignation and it was accepted. A good example of this may be seen in the records of the Trustees of the Washington County Grammar School for the year 1887: "The Committee appointed to settle the matter of lands claimed by both Addison and Washington Counties reported the matter *settled*." In the discussions of the Trustees regarding combining the Washington County Grammar School with the Montpelier Union School District, covering a period of several years, it is evident that there was considerable difference of opinion among the members of the Board, but there is nothing in the minutes indicating the basis for the disagreements. The only notation, following the decision to make arrangements with the Union District, is a bare statement of somewhat wholesale resignations. MSS Trustees Records of Washington County Grammar School, 1813-1919, meetings of June 17, 1887, June 9, 1858, March 31, 1859, n.p. Hereafter cited as *Trustees Records W. C. G. S.* This characteristic of reticence greatly impedes any effort to track down the background of some events.

authority over the region by their necessity to find lands to satisfy the royal orders for grants to British veterans of the war of 1754-60.¹⁰

The activities of the speculators were not methodical or orderly, any more than is apt to be true of any speculative operation. Certainly, they showed little concern for the orderly settlement and establishment of the towns granted by Wentworth, and it can be believed that they had less interest in the proper allocation and protection of the lands assigned to the public rights. During the speculative operations there was a considerable volume of transactions in the land of the Hampshire Grants in Connecticut and New York City. The New Yorkers would be little concerned about the public rights inasmuch as the entire system of town chartering prevalent in New England would be alien to their customs. It has been suggested by Matt Jones that much of the turmoil in the colonial history of the area now included in Vermont was due to the fact that the old traditional New England procedure of granting town charters was here applied under totally different conditions.¹¹

As Miss Woodard puts it, the system had gained its first impetus as far back as the original settlements. (And this is supported by a glance at the history of Plymouth.) It had been fostered by the early tendency of groups of people to adhere and settle together as a church congregation and from that start had developed into full flower.¹² So, all through the settlement of the older New England colonies, bits of the wilderness were entered and developed by groups rather than by solitary individuals or families, much as, in a later day, the west and far northwest sometimes were entered by fairly cohesive wagon-train groups. But, in New England there was this distinctive and unique feature—the land was granted to the group in common, for their later division into severalty; whereas, elsewhere in the United States specific plots of ground were granted or claimed by individuals. With what was probably a minimum of bickering in most cases, the older New England towns were for the most part divided into severalty by those who were to live on the land so divided. Consequently, given individual lots of land could and would be located and identified, at least as far as the methods of those days permitted.

In the region of Vermont, however, no such condition prevailed gen-

10. Jones, p. 47.

11. *Ibid.*, p. 258.

12. Woodard, *Town Proprietors*, p. 30; 34 *Cyclopedia of Law and Procedure* 1154, n. 77 (1910).

erally. Here a grant in common was made to a group of individuals who did not see the land, who were bound together by no common interest other than their common greed, and who might live in various places and not even know one another. If conditions had been such that settlers were readily and quickly acquired, the process still might have exhibited some elements of order because the proprietors would then have been forced to proceed with the land divisions in a systematic way. But this did not occur. Instead, time passed, proprietors died, sold out, or became impoverished. Proprietors' meetings, when held at all, were apt to be under anything but scrupulous and proper auspices.¹³ Settlement occurred in some instances by squatters unauthorized on the land and unacquainted and uninterested in the legal division of the land as provided for in the charters of the towns. Finally, in view of the individual way in which most of the settlement occurred, either squatters or *bona fide* settlers were likely to be interested in acquiring the best lands available regardless of any division which might have awarded such desirable lots to the public shares. There was, in other words, no community interest existent, intent on the development of a cohesive community and hence concerned with the welfare of the religious and educational rights.¹⁴

Among the early influences contributing to uncertainty respecting the lands in Vermont generally, and the public lands particularly, was the primitive technique of surveying of the time. To begin with, the region of the Hampshire Grants was most imperfectly known except for relatively small areas, particularly those in the southeast and southwest corners. A few other spots were known to some extent, notably the valley of the Winooski (or Onion) River. But for the most part, the interior aspects were matters of speculation rather than knowledge, reliance being placed on the tales of the few travellers. Moreover, Vermont does not contain numerous sharply differentiated landscape features which would have become well known and provided clear points

13. This state of affairs developed such serious proportions that the early years of Vermont legislation had innumerable acts providing for procedure of proprietors meetings in detail, especially regarding requirements that the place of meeting must be within the state, at least. See *Laws of Vermont*, 1779, 1782, 1783, 1784, 1785, 1786, 1787, 1791, 1794, 1797, 1810, 1822; *Neill v. Ward*, 103 Vt. 117 (1930).

14. The system of town proprietorship and its perverted form during the period of the opening of Vermont is well described in Woodard, *Town Proprietors*, whose findings are in agreement with the views of Jones.

of reference. There are a very few mountains of some prominence, such as Mt. Mansfield, no outstanding lakes, and no really prominent rivers. The Winooski attracted early attention, not because of its prominence as a river, but because its valley cuts sharply through the range of the Green Mountains, thus providing a relatively easy east-west passage. As a result of all this, the charters granted by Wentworth were largely estimates, or rather guess-work, as to definite location and bounds.

Because of the expense involved and the difficulties of the terrain, the earlier surveyors were commissioned by the proprietors to make only the simplest surveys possible in order to accomplish some land divisions. In most of the Wentworth towns no surveys were made until many years after the charters were granted. Surveys developed only as increasing settlement required. And no systematic surveying occurred until after the establishment of the State of Vermont, when Ira Allen was commissioned as surveyor-general.¹⁵

While Allen's own interest appears to have been in connection with his extensive land operations, the state government was interested in a survey to facilitate its own program of chartering towns and granting lands in those portions of the state not already granted.¹⁶ There was a real interest here, as the fledgling government was faced with serious fiscal requirements, and land grants offered an immediate source of income. (Parenthetically, some of the early state officers appear to have been bitten by the land-bug.) Prior to Allen's surveys, the most extensive were the surveys and attempted surveys of William Cockburn, who was under instructions from New York to make surveys in connection with some New York land grants in the region.¹⁷ These surveys, however, covered only certain relatively limited areas and some of them were abortive because he was driven off by settlers who considered his activities dangerous to their own situation. In his last effort, along the Winooski River, he was kidnapped by the Allen men.

Following Allen, the state made a concerted effort to "find itself" in the surveying operations of James Whitelaw. Both Allen and Whitelaw encountered great difficulty in reconciling town lines, and their troubles are reflected today in the map of Vermont. There are towns of unusually small size because it was found that flanking towns were

15. Slade, *State Papers*, p. 543.

16. "Committee Report on Unappropriated Lands," Nov. 4, 1780, in *Vermont State Papers*, III, pt. I, 153-155.

17. Jones, pp. 289, 303.

actually much closer than had been believed.¹⁸ Gores exist as spots left open between the lines of adjacent towns when the grants had assumed that such lines would meet. The difficulties are well illustrated by the following remarks by Allen to the legislature:

To the Honorable General Assembly of the State of Vermont Conveaned in Hinesburg—With Respect to Town lines in the Northerly part of the State notwithstanding the many imbarassments that has attended that Business the greater part of the Lines are Compleated as will appear from the Charter hereinwith Exhibited—

Some measures ought to be taken that the Lines of Fairfield, Smithfield and Hungarford might be ascertained as a Number of Towns are dependent on them Towns—The Charter of Concord was taken out in my absence and was to be returned if I did not attest the bounds which has been Refused by me and as that Charter Contains more lands than the contents of six miles square the west line has not as yet been run— In Consequence of the Legislature giving wrong bounds to Topsham the lines of Topsham, Orange and Wildersburgh will need alteration.

Several Grants have been made in vague terms & the grantees have requested Bounds to contain more lands than has been common where the grants were explicitly made which have been refused & the Charters are not issued—Sundry other matters that respects the surveyors will be verbally mentioned for want of time to write them at large.¹⁹

Whitelaw's difficulties were aggravated by the refusal of some towns to cooperate in submitting their charters for inspection and checking.

Beyond the social and economic obstacles to adequate surveying stood technical difficulties which would, in any case, have rendered surveying of doubtful certainty. This region is one which would have frustrated the most earnest efforts of a conscientious surveyor of those days. Besides the annual magnetic deviation (which for this area was not then known) there is a daily variation as between different periods

18. Weybridge, Waltham, Whiting, St. George, Brunswick, Kirby, Brookline, Landgrove are examples. The court, in *Town of Underhill v. Town of Jericho*, 102 Vt. 367, 369 (1930), declared that boundary lines must be located as nearly as reasonably possible to charter specifications, but conceded that this “. . . might in some cases be quite impractical and perhaps impossible. . . .” A similar view was taken as early as 1788, in a committee report to the legislature. *Vermont State Papers. Reports of Committees to the General Assembly, 1778 (March)-1801 (Oct.)* (Bellows Falls, 1932), IV, 54; *ibid.*, (Bellows Falls, [about 1929]), III, pt. IV, 102, 126, 128.

19. MSS State Papers, XXIV, 24.

of the day which would influence strongly the primitive early compasses.²⁰ Furthermore, the geological formations of parts of Vermont would have affected compasses, all unbeknownst to the early surveyors. Consequently, even the surveying done after the establishment of the state government was not reliable.²¹

All of this finally received official notice when it became accepted law in Vermont that the lines of individual holdings of land would be accepted as established by existing lines of not less than fifteen years time.²² The widespread knowledge and condonation of the uncertain

20. This information was first encountered in the office of the State Forester and later verified in conversations with Professor A. D. Butterfield of the University of Vermont. Professor Butterfield, now emeritus, has for many years made an intensive study of magnetic effects in Vermont. Among his efforts, he has made a long and frequent series of readings of such effects on compass readings on the transit magnetometer which is located at the University's campus in Burlington. He finds that between the hours of 5 a. m. and 5 p. m. there will be a diurnal declination of from 12' to 25' in something of an S-shaped curve. He stated that this is as closely as the variation can be defined since it is not at all regular; indeed, it is subject to wide fluctuations; at Rutland a variation of 2° was recorded within a period of twenty minutes. He has found no evidence of recorded declination figures, as presumably used by surveyors, except for some data of an inadequate sort on an 1805 map of Burlington. As to annual deviation, he informed the writer that in 1793, the earliest year for which there is any information, the correct figure appears to be 7° 8' 3". At present it is approximately 15°—as a diurnal average. An additional point of interest is that the curve of the annual deviation is not constant.

21. Additional difficulty arose because of the failure of early surveyors to think in long-time terms in making their notes. All too frequently, early notes included highly transitory reference points. One intersection in the state is extremely uncertain because the original survey, according to legend, ran a line "to the place where the red cow died." Noticeable trees were a favorite reference, and these have long since disappeared even from the oldest memories. In *Grand Trunk Railway Co. v. Dyer*, 49 Vt. 74 (1876), the court took special notice of this situation:

The compass varies by operation of time, and is swerved from its polarity by hidden agencies, which render it, in minute matters, vacillating and uncertain. Quantity alone [in description in a deed] gives neither shape nor form and, applied to an irregular plot, would be subject to vary in area according to the different degrees of subtlety and accuracy in those who make the computations.

See also *Hull v. Fuller*, 7 Vt. 100, 101 (1835) and *Neill v. Ward*, 102 Vt. 117, 132 (1930).

22. This view was expressed by the court in *White v. Everest*, 1 Vt. 181 (1828), and in many cases since then, of which a number are to be found in the bibliography. It is to be seen that, as time went on, the attitude of the court became constantly firmer on this point. The legislature took account of the situation by a series of Betterments Acts beginning in 1785. MSS Laws of Vermont, Oct. 27, 1785, n.p. For further description of such acts, see *infra*, p. 73, n. 30.

nature of property lines is revealed by the practice customary in Vermont both in land title deeds and in the leases on the public lands, of quoting the acreage as uncertain. The acreage, as an example, may be stated as "100 acres, more or less." All this was necessary in order to clear titles and establish accepted property rights.

For our purposes this general condition is of interest because the uncertainty of locations and areas affect the public lands in several ways: 1) certain of the small-sized towns have very small shares because of the total reduced acreage available in divisions²³; 2) some towns lack any public lands because such towns were created later to readjust previously poorly arranged towns²⁴; 3) certain towns possess public lands different from the normal pattern and different from the specifications of their charters as a result of shifting of town lines either to adjust for bad surveying or to accommodate administrative needs to topographic features²⁵; 4) it is probable that some public lands were "lost" when surveys or settlement proved there to be insufficient land for the settlers, who were then provided for from the public shares.

The preceding analysis has referred to hazards affecting the lands granted for religious and educational benefit in the towns chartered by Benning Wentworth during the colonial period. These towns, it is true, included most of the more desirable land in the region, but by no means did they blanket the area. The new government, established as Vermont, found itself in possession of large areas not yet granted nor provided with charters for local organization. As has been said, there was a pronounced interest in the granting of this available acreage, and it proceeded without delay. In fact, six towns possess charters dated in 1779, the year following the initiation of the new government.²⁶ The years 1780 and 1781 saw a large number of charters granted. And it may be seen from a perusal of the charters that the period 1780-1782 witnessed the chartering of most of the remaining open areas.

Most immediately, this is significant for our study because it means that the post-revolutionary towns were chartered and the land grants authorized before the government would have had time or opportunity to clear up the surveying problems. Neither they nor the grantees

23. Such as Weybridge and St. George.

24. Windsor and West Windsor is an example. Although the avails were divided, there was only one set of public lands in the original charter.

25. Examples are Windham and Londonderry, Mansfield and Stowe.

26. Bethel, Derby, Holland, Isle la Motte, Norton and Two Heroes.

could have had a properly clear idea of the location and extent of the open lands. This view is supported by the previously quoted remarks of Ira Allen.²⁷ The result, for us, was that described with respect to the Wentworth towns. It would be well at this point, also to recall that the public shares of land were, relatively, of even more consequence in the towns granted by Vermont than in those coming from Wentworth. This, because they represented a larger portion of the total town acreage, there being a total of one more in the Vermont reservations.

Before proceeding to consider further factors affecting the present status of the public lands, those already presented must be disposed of as influencing the later towns, granted by Vermont.

Obviously, the effects of the long-protracted New Hampshire-New York struggle had no direct consequences for the post-revolutionary towns. There were belated or indirect effects, however—these being the juggling of some of the earlier town lines and the existence of some New York land patents covering portions of the unchartered areas of Vermont. Likewise, the fear of invasion from the direction of Canada ceased as a deterrent to immigration. It is true that the War of 1812 again raised this specter, but that was after the new state had had some twenty years in which to consolidate, and the chartering of towns had then been completed. Poor routes for travel still maintained an influence—more than might be supposed, because of the fact that the largest part of the area chartered as towns by the Vermont government was composed of the most mountainous and inaccessible sections of the state. Even today some of these “hill-towns,” as they are commonly called, are reasonably inaccessible, over relatively primitive roads, and the town population figures reflect this condition.

Absentee ownership still existed, even for the newer towns, but on a more moderate scale, and a good proportion of the absentee proprietors were at least within Vermont, although New Yorkers continued, to some extent, to figure in the land grants. The conduct of proprietors continued, for the most part, on anything but a desirable level. The conditions were such that the state was forced to intervene with legislation designed to require proprietors to operate as contemplated in the customs of New England town establishment.²⁸

27. *Supra*, p. 68.

28. In the October session of the legislature of 1791 an act was passed requiring that proprietors meetings be held in the respective townships except in case less than ten families had settled in the township. In such instance, meetings still

What has just been said in connection with absenteeism has applicability to the problem of land speculation, which continued on a generous scale for a considerable period of time. Indeed, in the Hampshire Grants-Vermont area, the two phenomena were for the most part related, though not always. There were resident speculators of whom Samuel Robinson of Bennington was an outstanding example. (The Allens are not considered precisely in the class of resident speculators. Although they spent much time in Vermont, became so deeply engaged in Vermont land that it determined their ultimate fate, and were highly influential in the founding of the state, they were not true residents—that is, settlers.) For our interest, the important point is that both absentee ownership and land speculation continued in the post-revolutionary period to create conditions abnormal to the accepted New England procedure of town establishment and, hence, continued as hazards to the welfare of the public rights. The latter, it should be noted, were still without representation in the divisions of land and without the protecting eye of an agent in the occupying of the lots. It was not until 1791 that the college right was made over to the University of Vermont²⁹ and even later that the grammar schools developed. The town school right would have no interested agents until a demand for education should arise, and the same may be said for the rights devoted to the social worship of God and for the first settled minister. Possibly the last named right was the first to gain early protection in some towns by virtue of ministers arriving in such towns and laying claim to the shares. To a considerable extent, the legislature and governor continued Wentworth's practice of making grants and issuing charters for towns on the

had to be held in the county where the land was located. *Laws of Vermont*, 1791, p. 13. In 1794, the legislature further indicated the state of affairs in the following:

. . . it sometimes happens that a major part of the rights or shares of land in some towns in this state are owned by one or a few individuals, who from private views, may obstruct a division of lands in the mode already provided by law, to the great injury of the minor part of the owners. . . .

therefore there could be application by one-sixteenth part of the proprietors to the Superior Court judge, who could, if the proprietors could not show cause to the contrary, appoint a commission to divide the lands, including public rights, by the pitching system. However, if old records turned up which showed a previous proprietors' division, the old records were to stand. *Laws of Vermont, 1794-1796*, 1794, pp. 85-91.

29. *Ibid.*, 1791, October Session, pp. 29-30. See also, *ibid.*, 1802-1804, 1802, pp. 156-158, in which act the legislature reaffirmed the authority of the corporation to control the lands reserved for the use of a college.

basis of estimated maps. Thus, the difficulties resulting from this practice and the primitive quality of surveying continued for some time after the Revolution.³⁰

Various other factors remain to be presented—factors which in varying degree extend their influence even to the present day. But before approaching these further obstacles to a clear picture of the public lands, it is desired to offer a conclusion touching on the matters which have been covered. It must be affirmed here that this conclusion is no more than a speculation on the writer's part and would require a study in itself to provide adequate documentation. However, he is reasonably well convinced of its validity. This position is the result of manifold impressions received from the extensive and varied reading done during the course of this research. The conclusion is this: that the early factors adversely affecting the welfare of the public rights were chiefly influential because there was no effective interest in the immediate development of the practices of religion and education; that there was a mild general interest, with a more serious interest only on the part of a very few individuals. In other words, the apparent interest in these activities was largely a lip service or at best a pious wish.

Among the speculators, who represented a large proportion of the proprietary grantees, the dominant interest was the profit to be made from the land. If they were agreeable to the inclusion of the public rights in the charter provisions it would be, mainly, as such provisions were hoped to be added inducement to settlement. Certainly they could not be happy at the resultant diminution of their own acreage in the divisions of land. Nor could they be expected to have any considerable

30. The status of land ownership had become so uncertain and precarious that the legislature in 1800 passed an act with the purpose of providing settlers some degree of security. The wording of the preamble is significant:

Whereas many persons have purchased supposed titles of lands within this state, and have taken possession of such lands, under such supposed titles, and have made large improvements on the same, who at the time of purchasing, supposed such titles to be good and valid in law. AND whereas many of such titles may prove defective by loss of records, the neglect or lapses of others in the claim of title, or from other causes, who, if the strict rules of the common law be attended to, may be turned off from their possessions and improvements, so by them made at great expense, without any compensations or reward for such betterments. . . .

The act then provides that such persons shall not be dispossessed until the betterments and improvements shall have been paid for. At considerable length, it provides procedure. It is of particular interest to us to note that the act specifically excludes from its protection persons in possession of lands granted for public or pious uses. *Ibid.*, 1800, pp. 5-11.

concern in preserving the location and identity of lands falling to the public rights, particularly if such rights happened, by lot, to receive the choicer parcels of land.

The settlers, obviously, would be expected to feel more concern respecting the opportunities for religious observance and the education of their children. But it is the writer's view that the pressure of circumstances relegated such interest to a minor place. The struggle for survival among the settlers, most of whom entered the region with meager resources, was so serious and their margin so slight that religion and education must needs have been regarded as luxuries whenever they conflicted with the essentials of shelter, food and clothing. Even today, one encounters an attitude of hostility or resentment toward these sequestered lands—freed of carrying a share of the burden of property taxation—and the length of the school year is still an issue, as it may interfere with the seasonal exigencies of the farm. This is not to say that there was no interest in the development of the church and school—simply that these institutions had to defer to the more vital needs and pressures of the time. Clearly, some interest did exist, or we should not find the public rights reserved in the town charters.

In the case of the Wentworth grants the charters for the towns west of the Connecticut continued a practice familiar in the towns of New Hampshire.³¹ And it is noticeable that Wentworth had a particular religious interest in mind. Two of the four shares specified in his charters were to the benefit of the Church of England, of which he was a member, but which was distinctly a minority religious group in this area—and remained so.³² Not only were two of the four shares specifically for the sole benefit of the established church, but there could be a likelihood of three shares benefiting that faith—in any town in which the first settled minister should be an Episcopalian.

The more interesting fact is the post-revolutionary continuance by the government of Vermont of the practice of reserving land for public rights. In fact, not only was the practice continued, but the ante was raised from four shares per town to five. It has proved to be impossible in the existing records to find the immediate basis for this action. No record of discussion or debates appears to be available. It would seem,

31. *Laws of New Hampshire*, II, 600-636; III, 274, cited by Woodard, *Town Proprietors*, p. 51. For a discussion on the purpose of the grants in New Hampshire, see *Baptist Society in Wilton v. Town of Wilton*, 2 N. H. 508 (1822).

32. Clarke, "Vermont Lands," pp. 280-281; *Doc. Hist.*, pp. 40-41, 46.

from the general background, that the inclusion of land reservations for public rights was largely a matter of habitual thinking—a continuance of something to which those men were used.³³ And it would indicate that those who led the movement for the founding of the new state were concerned for its development and believed religion and education to be significant aspects of such development.

Perhaps the most startling of the reservations is that for “a college or seminary”—a high goal indeed, for a fledgling state not yet firmly on its feet. As a supposition, it is offered that, by inversion, President Wheelock of Dartmouth College gave impetus to this provision. Dartmouth College was possessed of an influential place in the minds of people in this area, particularly in the Connecticut Valley. He very early commenced a series of efforts aimed at securing for Dartmouth the benefit of lands in Vermont, with the proposal that the college serve as the institution of higher learning for the state. In this program he was unsuccessful except to the extent that the Town of Wheelock was granted in 1785 for the benefit of Dartmouth College and the Moor Charity School.³⁴ It must be recalled that the leaders in the movement

33. Woodard, *op. cit.*, pp. 125-128.

34. The Town of Wheelock is an interesting phenomenon in more ways than one. It is interesting that the new state should reserve a town for the benefit of an institution in a neighboring state. The date of the charter is 1785, and it can only be assumed that the grant was an effort to quiet the proposals of Eleazar Wheelock for Vermont lands. By this time, the proposals had expanded to the point where the Dartmouth authorities had even suggested that the college would establish several academies in Vermont—apparently branch colleges of some sort. The whole business is of such interest in illustrating the ways of the time that quotation at length is made of so much of the charter as applies to the reservation of land:

One hundred and fifty acres of Land be reserved for the use, benefit & support of the Ministry of the Gospel in said Township or precinct forever one hundred and fifty acres of Land for the use and support of an english School or Schools in said Township or precinct on good Tenable Lands as the Situation there will admit. and whereas the said grant of Land is for a public and Important use it is hereby Declared that the Lands and Tenements in every part of said Township or precinct shall forever be free and exempt from public taxes that is to say, so Long and while the Incomes & profits shall be actually applied by the president & Trustees & their successors to the purposes of said College or School as above expressed. [*Vermont State Papers. Charters Granted by the State of Vermont* (Bellows Falls, 1922), II, 219.]

A further interesting sidelight on Vermont ways was given the writer during a conversation with Mr. Harvey: He called attention to the provision of the charter exempting all the land from taxation and said that in the days when the state levied a direct tax upon the grand list a footnote is to be found in the report of the state Commissioner of Taxes that Wheelock is exempt. However, as the town developed, local government became necessary, and a revenue was needed to

for the establishment of a separate state had to combat a sentiment among some groups that the best solution for the problem of jurisdiction over the region would be a junction with New Hampshire. Some of those who supported the plan to separate from New York opposed the formation of a separate state and favored, as they spoke of it, a return to New Hampshire. We find Ira Allen, and others of his persuasion, advocating the establishment of a college or university; and, in the absence of other convincing information, it is to be presumed that these men did not favor Wheelock's proposals, as they were felt to constitute a tie with New Hampshire which should be avoided.

In any case, the reservations were made and constitute an effort to effectuate public policy. The immediate concern of this chapter is to illuminate conditions which can be regarded as hindering or minimizing the effectiveness of the medium selected for the advancement of the policy.

And now to proceed to a review of later and continuing influences adverse to clear-cut administration of the lands authorized as public rights. A good place to start is with a factor which was of consequence very early and which may be regarded as underlying and pervading certain others to follow; namely, an odd but very evident sort of indifference on the part of the grantees of the public lands. By this is meant that one finds evidence all through the documents and other

support its functions. So, the local authorities simply improvised a system of taxation! Mr. Harvey went on to say that he had been unable to find any law providing for this taxation, and during a visit to the town, he asked the local authorities the legal basis for their taxing. They informed him that there was no legislative basis, but they had to have revenue; so they just went ahead and assessed and taxed. This conversation illustrates nicely the way in which affairs concerning sequestered lands can become obscured, particularly in view of the nature of the officials who were involved in this passage. They were incorrect in their assumption that there was no relevant legislation, for in 1857 the legislature passed an act providing for assessing taxes on lands for local purposes of the town. They also appear to have been unaware that the Supreme Court of the State of Vermont, by an authoritative ruling, had provided a basis for local taxation in the Town of Wheelock in 1874. The case of *Morgan v. Cree*, 46 Vt. 773, dealt with this matter, holding that this was not an exemption from local municipal taxes, such as town, parish, district, and village taxes, assessed upon and to be expended for the use and immediate benefit of the particular municipality. In short, the court reconciled the terms of the charter with the terms of the legislation and the needs of the community by holding that local taxes are not public taxes. In assessing property for state and county taxes, whereon such taxes are assessed per capita, only one-fourth of the population of Wheelock is included. *Laws of Vermont, 1857-1858*, 1857, pp. 160-162; *ibid.*, 1886, p. 73.

sources that, once the rights to the lands were established, the various grantees appear to show little enthusiasm for the effort of locating the lots, disposing of them, and maintaining the requisite records for their proper administration. In isolated instances, one finds individual ministers displaying diligent effort to secure to themselves the lot for the first settled minister. But this was neither a concerted nor a uniform practice. In other isolated cases there has been considerable fuss and feathers raised as to the right of one congregation or another to the proceeds of the lot for the social worship of God. But with these exceptions, the grantees have been astonishingly lackadaisical when it came to the labor of identifying the land representing their respective shares and of maintaining control over them.

It is true that the appearance of an interest can be found, but not to the extent of doing what was needed. In meeting after meeting of the annual Convention of the Episcopal Diocese of Vermont³⁵ and of the trustees of county grammar schools, the minutes will contain discussions of the respective lands and adjuration that the necessary action be taken to secure the lands and the avails therefrom. One also reads frequent—perhaps it might be more accurate to say, steady and continuing—expressions of dissatisfaction regarding the reports of those immediately responsible for the lands, and these remarks will be followed by resolutions directing that the situation be improved. The effort rarely went beyond the resolution, however, and the next year's minutes will reveal that still no adequate report is available, or that no progress has been made in securing the lands. This, in turn, will be followed by still another well-meant resolution. In the case of the various lands which were made the responsibility of town selectmen, one finds simply a record replete with inaction.

There are various instances, frequent enough to form a pattern, of great concern, coupled with sustained effort, in the matter of securing a confirmation of the right to the land. An outstanding example to serve as an illustration is the litigation engaged in by the Diocese for determination of the rights to the glebe and the S. P. G. lots. Three suits were carried to the United States Supreme Court,³⁶ and various other suits were fought out in inferior courts. Both the record of litigation

35. Hereafter referred to as "the Diocese."

36. *Pawlet v. Clark*, 9 Cranch 292 (1815); *S. P. G. v. Town of New Haven and Wheeler*, 8 Wheaton 464 (1823); *S. P. G. v. Pawlet and Clarke*, 4 Peters 480 (1830).

and the vigorous tenor of remarks in relevant diocesan convention minutes and commentaries would lead one to expect the Diocese to be a diligent and careful landlord. But once the right was established, the effort slacks off even though the good intentions remain.

Such a record is possibly to be regarded as explicable in the case of the various shares entrusted to town authorities. The selectmen and listers had little to gain by sequestration of such lands because the inevitable result was that the total town tax must be shared by just that fewer number of parcels of land. In the case, however, of the Diocese, the University, the county grammar schools, and some church congregations, it is a bit difficult to fathom the failure to pursue a course of action which would long ago have secured their lands and the income therefrom. There is a real value involved, and an annual income of greater or lesser dimensions. In the instance of the S. P. G. lands pertaining to the Diocese, a rough appraisal value can be made as in the neighborhood of \$200,000, and it is unexpected to encounter easy-going ways in the institutional administration of an endowment of such proportions. Nevertheless, it is true that such has been the case, and the policy has resulted in various losses to the grantees.

The same lack of effective interest can be seen on the part of the state government. Search has been made in vain for any serious, continuing effort to oversee the proper use of the lands and their utmost utilization for implementing the policies for which they were authorized. The report rendered to the legislature in 1878 is an isolated instance only, and even it is suspect for accuracy.³⁷

One factor which has clearly been responsible for much of the obscurity covering the lease lands, and which can be regarded as growing out of the conditions described in the preceding paragraph, has been that, almost completely, the administration of the lands has been left to

37. Mr. Myrick, Secretary of State, informed the writer in an interview that there are "practically no records on the lands in the state offices." In 1804 the University of Vermont rendered a report to the legislature on its lands. Evidences of this report are to be found in the *Assembly Journal* for 1804 (in which the report is referred to committee); in the opinion of the Vermont Supreme Court in *University of Vermont v. Ward*, 104 Vt. 239 (1932), (which notes that such a report was rendered); and in the files of the University Land Office (in which there is a recent similar reference to it). No copy of the report is to be found either in the records of the Secretary of State, of the State Library, or those of the University. There has been no subsequent report. For early state efforts to administer the lands, see the comments of the court in *University of Vermont v. Reynolds*, 3 Vt. 542 (1831).

the mercies of what, for want of a better term, may be called amateur administrators.

In the case of those shares entrusted to the administration of the towns, the officials directly concerned would be the listers and the selectmen. The listers (Vermont's nomenclature for assessors) are the point of first contact. They are the ones who are presumed to view the real property of the town, assess it for taxation, and list it properly so that the selectmen can propose a tax rate and the collector make the collections. Under the provisions established for the quadrennial assessment report, previously discussed, the listers are responsible for locating and listing sequestered lots. Furthermore, it is obvious that they should be aware of those lots exempt from taxation if the taxable list is to be correct. The selectmen are directly charged with responsibility for the care and preservation of these lands, their leasing, and the disposition of the avails to the respective uses.³⁸

As has been suggested, the selectmen have no great interest in a vigorous administration of the lands, and there are to be found instances in which they are prodded into activity only by the insistence of the beneficiaries. In fact, in some instances the beneficiaries have assumed the administrative burden in order to procure the avails of the lands.³⁹ The listers are not apt to have a great interest in an accurate record of the lands. Their pay is not such as to induce them to go to great lengths, particularly if the past has obscured the lands and a search of the old records would be required.⁴⁰ Furthermore, it must be remembered that their real interest is in producing a list of taxable property, not a list of tax-exempt lands. Both selectmen and listers are elective officials and, as such, amateurs in such administration as the lands require. And, of course, election also means occasional discontinu-

38. *P. L.*, ch. 146, secs. 3536-3539; ch. 188, secs. 4341, 4345.

39. In numerous instances in town reports, school land rents are accounted for by the school district treasurer's report. In two cases, the writer was informed by members of the school boards that they personally went out and collected current and back lease rents because the selectmen failed to do so.

40. The *Forest Taxation Report*, p. 15, has described this situation as follows:

Under the Vermont form of local government the officials of the average town are not full time office holders but citizens who run their town job in time taken from their regular work. Usually the pay of town officials is lower than the prevailing local wage rates. Thus time spent by listers and other town officials is done at an actual financial loss. In many towns there is even criticism of officials for spending too much time on their jobs. This situation has produced uneven appraisals, particularly of timberland.

ity of administration with the changes attendant on elections.⁴¹ It might be supposed that the selectmen would have been more vigilant of the lands if the revenues therefrom had pertained to the town general fund and been of benefit to their official records. But even this is open to question in view of the careless ways of some beneficiaries which have administered their own lands. The state has provided no effective stimulus for or supervision of the work of the local authorities respecting the lands,⁴² and so the fate of the lands has varied from town to town and time to time.

A consideration of those shares privately administered brings to light a record no more admirable, but less explicable, because in these cases the quality of administration could mean a direct gain or loss of revenue. In the later sections of this study each of the public rights will be presented in some detail. For the purposes of this chapter, it should be noted that the practice has been to assign the administration of the lands to some individual as a part-time job providing him in some cases with a small addition to his income by way of fees.

The Diocese has entrusted its lands to the care of a treasurer or "state-agent." This is a continuation of the general pattern established by the S. P. G. when it wrote the various powers of attorney, establishing the trustees of the lands, prior to the transfer of the lands to the Diocese. Briefly, the method has been that in the several sections of the state local agents have been commissioned on a county basis. Some agents have had a single county, some have overseen more than one.

41. The following is quoted, in illustration, from remarks made to the writer by Mr. Harvey:

There are many towns where the towns don't even know the school lands. Sometimes where there are buildings on the land the listers gradually lose the distinction between the lands which are properly exempt and the buildings which are taxable, and come to listing the whole property. And then the whole thing, lands as well as buildings, is taxed as an ordinary piece of land. Then as time goes by and all this is forgotten, as different officials come in, someone wonders why this piece of property should be taxed so much lower than other pieces in the town, and the assessment will be raised and the town rate applied so that it will become just another piece of land in the grand list.

It might be wondered why the tenants permit this to happen. The tenants in many instances are no more aware of the status of the lease lands than the listers.

42. Again to quote Mr. Harvey:

"The state before 1931 used the town grand list for laying the state direct tax. The state naturally was not supposed to include the lease lands. But if the town erred and did so, then the state followed along since the state did not question or look into the town list."

They dealt directly with the lands, locating the lots, arranging leases, and making collections. They reported and remitted to the treasurer or state agent of the land trustees who, in turn, remitted and reported to the Trustees of the Diocese. The only material change in this technique is that within recent years, during the stewardship of Guy Wilson of Bethel and his successor and brother Joseph Wilson of Montpelier, the state agent has assumed a more active role in locating lots and in making the leases. This change has been accompanied by a change in fiscal arrangements allowing the state agent mileage and per diem payments for time thus spent. The agents, both county and state, have been men of various vocations. The roster is heavy with ministers, but others have engaged in the land agency. The present state agent, Joseph Wilson, is an insurance man; his brother, Guy, was an attorney; one of the county agents is an architect. The general characteristics to be seen are that they are men in lines of endeavor which give them some standing in the community and which give them some degree of control of their working hours. The latter would be essential in this system of administration so that the agent could visit lands and tenants.

Probably, in the early days, the arrangement could be justified by the problem of transportation and perhaps by the fact that commercial activities were then not so highly specialized and differentiated. But it has little else to justify it. In all the time since the lands were secured to the benefit of the Diocese, the agents have never succeeded in introducing a uniform method of reporting by the county agents; nor have they ever had in one place a record even of those lots which were supplying a revenue. Neither have they ever had a procedure for remitting which has been to the satisfaction of the Diocese. And after this great length of time they are still in the process of locating lots.⁴³

The county grammar schools present much the same picture, although not to the same extent as the Diocese. They, too, utilize the spare time of an otherwise occupied individual, generally he who is elected to be treasurer of the board of trustees of the school. And again we find the lands being administered "when, as and if." It is probable that the grammar school boards had more success than the Diocese, in the early days, in locating the lots pertaining to them, partly because in each instance they had a much smaller area to cover, being concerned with only one county, and further because they may have displayed for a time a

43. In fact, the writer, during the course of this research, has had occasion to call Mr. Wilson's attention to certain lots of which he was unaware.

greater energy. With respect to the latter supposition, it is generally accepted in the state that many of the grammar schools were organized as such for the primary purpose of gaining assignment of the lands. Indeed, in at least one instance an already existing institution changed its designation to that of grammar school with that intent.⁴⁴

However, the later history of the grammar school land administration does not stand up well under inspection. One feature of local custom should be mentioned here as having been influential. It is that on such boards election, both as to membership and as to holding particular offices on such boards, is apt to amount to life tenure. In this program of research, various record books of board secretaries and treasurers were perused, and it was regularly noticeable that secretaries and treasurers, once elected, were apt to continue in those offices until they died. On the one hand this does, of course, allow of long periods of continuity of administration, but too long continued it also exposes such administration to the frailties of senility.

The effect of this policy was distinctly noticeable and sharply demonstrated in the keeping of record books—so much so that one could follow the aging process clearly. Generally speaking election to such posts as secretary and treasurer is by selection of a younger one of the board members, quite possibly a recently acquired member. The minutes, or the treasurers' accounts, will exhibit vigor, both in the handwriting and in the volume and detail of data recorded. As to the lands, the record book and accompanying correspondence generally display a fresh and earnest desire to put all in order—at least so far as spare time permits. Gradually, over the years, a relaxation appears. The minutes will still be relatively ample as to the general subjects presented, but details fade out. In the handling of the lands a more routine operation becomes apparent—a simple receiving and receipting of such rents as come in, with no more than a half-hearted effort to enforce collections or to maintain identity of lands. Still later, the records cease to be adequate even as to general topics, and this becomes progressively worse. The writer has read secretaries' minutes which would be worded approximately like this: "The board met and discussed various matters." Years before, this same individual may well have covered several pages with careful reviews of the meetings. The accounts of the lands

44. The Washington County Grammar School changed its name from the Montpelier Academy in 1813 in order to obtain the Jefferson (afterward Washington) County grammar school lands. Andrews, "Grammar Schools," p. 151.

suffered in the same way. Finally, in extreme old age, the handwriting has become almost illegible and at last scrawls crookedly across the page without content of any value. This continues for a short period. Then one comes again to a meeting well and fully recorded. This minute will include the information that the old secretary has died during the year and a new one is elected. The same process is customary with the treasurers.

All this is of the more significance for us when coupled with another customary procedure in Vermont: the tacit acceptance of the honesty of such officers, with the result that they ordinarily render no detailed reports nor are subject to such controls as audits and inspections, except of the most perfunctory sort. The result is that the individual entrusted with the care of the lands comes to be the only member of the board acquainted with them in detail, and there is no check on the status of the lands as the slackness of old-age creeps on him. Further, when he finally dies, his successor must start all over again since no one else knows the details. And with the inevitable inadequacy of the later minutes or accounts inherited, there is every chance that the successor will not pick up all the existing loose ends.⁴⁵

One further local custom should be remarked at this point, one which constitutes in itself a serious hazard respecting welfare of the lands and is also related in its effects to what has just been described. It is the practice in Vermont for records to be in the custody of the officers responsible for them, physically as well as officially. In practice this means either in the office or the home of the individual. This is so widespread and well accepted that even the basic records of local government, those of the town clerk (corresponding in other sections of the United States to those found in the county court house) will be located in the house or office of the person who is the clerk.⁴⁶ It is easily understandable that this is so. Even today in most of the local jurisdic-

45. Mr. Joseph Wilson suggested to the writer that this problem constituted a justification for the county agent system used by the Diocese for the S. P. G. lands. He stated that he thought the "problem of succession" was a serious one and difficult to handle. His view was that with the county agent system there is available someone to succeed the state agent who is not entirely ignorant of the business. The writer is not inclined to regard this so favorably after what he has seen of the records of the county agents.

46. In one instance, for example, in looking through town records during this research the writer did so at the kitchen table while the clerk, good housewife that she was, worked over her family's evening meal at the coal range across the spacious kitchen.

tions of Vermont the volume of official business is slight and is hardly more than an avocation for the office-holders. Fees amount to little, and the official must proceed with his normal work, simply tucking in the official duty with it. Historically, this was even more true, and the practice would readily have gained a firm footing. If this is true of governmental agencies, it is easy to see that it should be the custom for officers of such institutions as those which are being here considered.

It is apparent that this practice tends toward more informality in records than would otherwise prevail. It most decidedly contributes to loss of records and discontinuity of administration and in this respect is of consequence as an adverse factor affecting the identity of the lease lands. It makes much more difficult and uncertain the efforts of a successor of an old, long-time secretary or treasurer. This statement, as it stands, may leave questions in the mind of the reader of this study: in what ways can records be lost; what sort of papers might be lost and of what significance would they be? And yet the statement has a definite and significant place in this study. It presents an important administrative fault and one which can be of influence respecting the usefulness of the lands as a device for implementing public policy. Consequently, it is thought worthwhile, even at some risk of becoming anecdotal, to support and illustrate the statement by presenting some instances which have been encountered.

Probably the outstanding incident of this sort is the case of the so-called "Hicks' box." This is a black tin container similar to a hinge-lidded bread box. It is filled with original land leases and other records of equal importance respecting the S. P. G. lands and is now in the possession of Mr. Joseph Wilson, the current state land agent, at whose home the writer inspected the contents. But for some thirty years its whereabouts was unknown. Hicks had been for a long period the state treasurer of the land agents and, in accordance with custom, had finally died in office. A successor was appointed who, as he became acquainted with affairs, ran onto references to the contents of such a box. He inquired of the Hicks family but was told that they knew nothing of it, and there the matter rested. Finally, the home was sold. The new owner in rummaging through her new attic encountered the box and examined the contents. Fortunately for the records of the Diocese, she was a person of perception and recognized the value of the papers. After some inquiry she found that Mr. Guy Wilson was "in some way" connected with the S. P. G. lands and communicated with him with the result that

after three decades the Diocese again possessed this valuable set of documents. It might be added that at the time the writer examined its contents, the box was kept in the basement of an old three-story frame apartment building completely lacking in any sort of fire prevention or protection.

Another equally illuminating instance is worth presenting. At the time of this writing the writer has on his shelves a volume which is the Records of the Trustees of Orange County Grammar School, covering the years 1807 to 1867. This is also a story of attic rummaging. Some time ago the writer's wife was dining in Montpelier. A young lady sat with her who was an acquaintance and who asked what we were doing in the town at the time. The writer's wife related the story of this research, whereupon the young lady volunteered that she knew of a book which she thought would be of interest. A friend of hers in cleaning out an attic had found the book and had preserved it instead of consigning it to the bonfire with the remainder of the attic's accumulation!

Still other instances of the results of such informality in the custody of records were encountered. A few of these will serve to demonstrate the widespread effects it has had. Mr. Stewart Bryan of Montpelier, the present secretary of the Trustees of the Washington County Grammar School, stated to the writer that several presidents of the board had died recently and that "their records, if any, are still in their homes. I haven't yet collected them together." At that time, Mr. Bryan had held his office of secretary for some five years. Mr. Max Barrows, supervisor of secondary education for the State Board of Education, during the course of conversation on the subject of school lands said that there had been considerable difficulty in regard to the lands in one town because a treasurer there, defeated for re-election, became angry and burned all of the treasurer's records.

Even the state government has not been immune. In an effort to trace certain lands, reference was made to the records of the State Treasurer. The basement of the state capitol yielded up the volumes on land taxes for 1789, 1797, 1798 and for 1800-1816. The next succeeding records found were for 1861. Inquiry elicited from Mrs. Mary G. Nye, assistant to the Secretary of State, the information that the whereabouts of the intervening volumes was not known. They may have been consumed in the statehouse fire of 1857 or they may not. The reason for this uncertainty is that for a long number of years it was the practice of the state treasurers to retain their records at their homes at vari-

ous places in the state, bringing such records to the capitol during sessions of the legislature. Consequently, it is not known what records may have burnt and what records may have been lost at the homes of treasurers.

An additional aspect to this business of personal control of records should be noticed in a matter of psychology. The custodians of records come to look on them more or less as a personal possession. This has been noticeable in the frequent reluctance of town clerks to open their records for study or to supply information. Such reluctance, it was found, was not attributable to the unofficial standing of the writer. Mr. John C. Clement, acting curator of the Vermont Historical Society, stated that he had encountered the same attitude; and the officers in the State Board of Education were emphatic in their comments on the unsatisfactory nature of returns to their various questionnaires. It was found that even when town clerks were amiable respecting the use of their records, they frequently were of little help because they were unaware of what they had. Few of them knew the nature of the contents of any older record volumes.

The University's administration of its lands would appear, at first glance, to be in a somewhat different situation from those categories just discussed. The University has, of course, regularly had its administrative offices, including fiscal sections. The lease lands pertaining to that institution have been administered through the agency of one or another of the administrative officers of the University. This gives the operation the appearance of continuity and professionalism lacking in other administrations of lease lands. However, this appearance is misleading. Study of the records of the University shows that its lands, too, have been a sideline activity. Whatever University officer had them as a responsibility, had them only as an additional duty. Fairly recently, there has been established a Land Office, charged with the administration of the University's lease lands and other extensive realty holdings. At present Professor Butterfield, already referred to,⁴⁷ is the Land Officer. He has devoted considerable time and effort to arranging records and data and attempting to clarify things. But even this arrangement is deceptive. The University affords a commodious, comfortable and well-equipped office, complete with fire-proof, combination-lock safe for the more critical records. It has appointed a Land Officer who is a capable and interested individual. And all seems in order. Yet, at the time dur-

47. *Supra*, p. 69, n. 20.

ing which this study was carried on at the University, the Land Officer was little in evidence. His primary responsibility and practically all of his time and energy was directed to the task of veterans' affairs officer of the University! The University's record of lease land administration is little more satisfying than the records just reviewed. Indeed, one of the leading cases on lease lands in the state Supreme Court may be said to have arisen as a result of negligent administration of lease lands assigned to the University.⁴⁸

The law respecting conveyancing of land in Vermont has contributed to the difficulty of the administration of the lands. The lease lands, as has been described, are normally leased for long periods, most, in fact, in perpetuity, barring the failure of the tenant to comply with the terms of the lease. Over a period of time, changes of tenants occur. Sometimes this is due to death, in which case the property will be received by inheritance or will be sold. Sometimes it is simply due to the decision of the tenant to move and dispose of his land. It is not unusual in the course of such transfers for sight to be lost of the fact that all or some of the land involved is lease land. After such a lapse it sometimes occurs that warranty titles will be given covering the land which is properly lease land, along with other types of property.⁴⁹ This is made the more possible because transfers of land are not always recorded and because in some towns the records are so poor or the clerk is so ill-informed that restrictions on the land would not be apparent when recorded. Finally, there is no requirement that, in the case of change of tenants of lease lands, the agency owning the land need be notified of such change. It must be remembered that the largest part of the lease lands is either

48. *University of Vermont v. Ward*, 104 Vt. 239 (1932).

49. An outstanding, but not unique, instance may be seen in the case of *Keith v. Day*, 15 Vt. 660 (1843): in 1801 the University of Vermont made a durable lease of the second division college lot in the Town of Barre to one Moses Rood, and in 1804 this lease was recorded in Barre. In 1805 Rood sold and conveyed by deed part of the lot to one John Belding, which conveyance was duly recorded the same day. Belding made a legal deed of conveyance in 1806 to Ira Day; Day sold and conveyed to John Baker in 1806. In 1817 Baker sold and conveyed to Joel Steele, who sold and conveyed to Chapin Keith in 1818. In 1831, Keith sold and conveyed two separate parts to John Moore, Jr., and Smith Sherman respectively. In 1840 he sold and conveyed another part to William Bassett, and the following year a fourth parcel to Orasmus Walker, retaining a small portion for himself. All deeds from Moses Rood down to Keith were warranty deeds, with all the usual covenants of seizin and title, containing no allusion to rent or reservation about its payment. Moses Rood, however, paid the rent to the University until his death in 1830. Thereafter no rent was paid until the University brought suit in ejectment in 1839.

farm or woods land, and it is not infrequent that such a lot will become incorporated into a holding otherwise composed of normal taxable land, the separate identity of each portion becoming obscured. In view of the previously described administrative weaknesses of the several agencies responsible for the lands, such events occur without difficulty.

The importance of this inadequate procedure respecting conveyance, as a factor in obscuring the lands, was stressed in conversations by several individuals acquainted with such matters. Mr. Harvey made much of it. He even went so far as to say that he had encountered instances in which land was paying neither taxes nor lease rent, the town assuming that lease rent was being paid, but the beneficiary being unaware of the lot. Mr. Harry C. Shurtleff of Montpelier likewise was impressed with the problem. He was acquainted with it in two ways. For one, he was for many years the treasurer of the Trustees of the Washington County Grammar School and responsible for those lands. He, further, was an attorney, and his practice brought him various cases involving land title searching. Mr. Ellsworth B. Cornwall of Middlebury was at one time Chairman of the State Public Service Commission and for a long period of time before that did title searching in connection with federal farm loan activities, and he was most pronounced in his views.

Some correspondence is shown here as illustrating the fact of this condition and its results. These letters happen to be taken from the files of one of the grammar schools, but similar letters are to be found in the various other lease land categories. For obvious reasons, some of the identifying material is omitted here. Otherwise the letters are true reproductions as they were seen in the files.

August 8th 1922

Dear Sir:

Henry Webster sent me the enclosed bill and asked me to pay it and tell you that he sold his land to me three years ago. Please send me a receipt and transfer Henry Webster's name for mine.

Very truly yours,

September 10, 1935

Dear Mr _____

Replying to your letter of the 12th of August relative to lease land rent.

We own the Dickinson place so-called and had supposed that all taxes were paid so we had settled with the tax collector of _____. However it appears that we now owe \$57.82 lease land on this property. We have already optioned this property to the government and we expect payment soon. We would prefer to take this money from the sale money when received and settle the account at that time, provided of course that this is in the near future.

As to the Beman Howe land rent we are not holding the bag (Thank God for one break).

We trust that this will work out to your full satisfaction.
Very truly⁵⁰

The reply to the above letter is also worth presentation:

Sept. 11, 1935

Gentlemen:

RE: lease land rent. Dickinson Lot.

I have your letter of the 10th and in reply will say that it will be perfectly satisfactory if you pay the rent at the time you indicate.

The Town of _____ has no authority to tax this land; although it may tax the *buildings* thereon. The land itself is subject to a perpetual rental in lieu of taxes. This was in the original grant.

If you are dealing with the government, you should have a clear understanding with them that you cannot give them a clear warranty deed and that you hold only a leasehold interest; and that this rent, both past and future, follows the land. Otherwise they might come back on you for breach of warranty.

Yours truly,

9/22/19

If we, as a company, or individually, owe anything for land rent we would appreciate your sending us an invoice giving *all the details* about it so that we can locate the land as early as possible. We will then make up a record so that we wont have to ask you to do this hereafter. Acreage, location (exact), rent per year, what years covered, from whom acquired, etc., if possible.

Your truly,⁵¹

50. This letter was from a bank, signed by the treasurer of that institution.

51. This letter was from a lumber company which became aware that it had acquired some lease land in a forest area purchased some time previously. Correspondence relative to the location of the lot continued over the years. In a reply to the lumber company in 1932 the grammar school treasurer wrote:

As to your inquiry relative to range and lot number, will say that all of the information that I have is contained in the treasurer's book which I received from my predecessor. In this the lot is described as 'Land in —,

Another instance of this confusing condition was described by a member of the legislature and relates the situation in which a son found himself entangled: He had purchased a farm, with improvements, from a bank, which in turn had acquired the property by foreclosure. Part of the farm comprised some very poor land which he wished to be rid of. In the papers covering his dealing with the bank it was evident that part of the farm was lease land, but there was no indication as to which part was so sequestered. He finally went to the shire-town records, since his own town's records offered nothing, but could find no deeds or leases recorded by which to trace the property. As he saw it, if the poor acreage was lease land, he could simply cease paying lease-rent and allow the lease to be cancelled, but if the poor acreage was non-sequestered land, he would be required to pay his taxes to avoid sale of his farm by vendue, including taxes on the poor land. When all else had been fruitless, he went to the selectmen and requested that they survey the farm in order to identify the lease land acreage. This they refused on the grounds that the survey would cost more than the lease-rent. (It should be pointed out that this lease land was in one of the shares falling to the responsibility of the selectmen.) At about this time he entered the Army and, under the protection of the Soldiers and Sailors Relief Act, announced he would pay no more taxes or lease-rent until the identity of the lease land was established.

Careless use of terminology has added its bit to the gradual confusing of the lands. This must be regarded as a factor in itself, but should also be thought of as closely related to the preceding factor in its application. At the base of the problem of terminology is the fact discussed in Chapter I that no uniform term has been used to designate the lands which are the subject of this study. That in itself has meant a lack of clarity in thought and discussion of the lands, so that the actual nature and status of the lands is not properly understood or appreciated by many people, including those most closely involved. Largely for lack of a distinctive term, for example, church and college lands became confused, and this can lead to improper handling of such matters as taxation of them. To be specific, the law in Vermont exempts from

2nd Div. 110A.' there being no range or lot number given— and I gather that this is the 2nd division grammar school lot, wherever it is.

The latest correspondence seen was dated in 1938, and at that time no progress had been made in the correspondence. Inquiry of the treasurer elicited the information that nothing further had occurred. Either the lumber company had accepted defeat or had proceeded in other channels in an effort to identify the lot.

taxation only that real estate owned by a church which is occupied by the house of worship and the parsonage.⁵² Through gift, or otherwise, churches have acquired various real estate holdings, including farm and forest properties, which are subject to taxation. Now, if one loosely thinks of and speaks in terms of church lands, it is not too difficult to see how, in the course of time and changing personnel, lease lands listed as church lots should come to bear a tax. The same is true with respect to college lands.⁵³ On the other side of the picture, the lease lands at times bear an undue burden of antagonism. The tax payers of towns have been known to become concerned, to the point of strong emotion, over the amount of land sequestered from taxation. And it has happened that lease lands were regarded as representing the total of tax exempt acreage, whereas in reality other exemptions, such as the holdings of the federal government, were those creating the tax crisis in the town.⁵⁴

Beyond this point, however, other loose practices of terminology have existed over a long time which have had a more direct influence. It long ago became quite normal and customary for tenants to speak of "owning" lease land. A companion practice has been to speak of "selling the land" rather than "selling the lease." And, oddly, the true owners of the land, the grantees, have subscribed to this and acquiesced in such usage of terms. The letters exhibited in the discussion of the preceding factor display this custom, and it is prevalent throughout the files which were examined. To use terms in this way over a long time is inevitably to influence the thinking involved, and it is not at all surprising to find farm families after a few generations firmly convinced that they own the land. Instances have even been found during this research in which the tenants speak of paying the tax to the grantee, rather than lease-rent.⁵⁵

52. *P. L.*, ch. 33, sec. 592.

53. On the matter of towns taxing lease lands, see *University of Vermont v. Carter*, 110 Vt. 206 (1939).

54. Mr. Harvey went so far as to say that he regarded loose language as constituting a large part of the problem of the lease lands, and Mr. Francis L. Bailey, Commissioner of Education, pointed out that the towns, in statistical reports to the department, say indiscriminately, "from glebe rents." For an example in which terminology is unclear even in a court report, see *University of Vermont v. Carter*, *op. cit.*

55. Another terminological practice should be noted as it has made for difficulty in administering lease lands. The general practice in Vermont is for farms, and other parcels, to carry the name of an individual or family. Thus, instead of lot and range numbers, records are apt simply to refer to a place as "the Dickinson lot" or the "Graham farm." This custom prevails even in such records as those

One final factor remains to be presented, which may be regarded as underlying, or opening the way to, several of the factors previously discussed. This is the distinctive character, or temperament of the Vermonters. As in any discussion of the character of people, exact definition is difficult, and explicit terms tend to elude the writer. And, as in any consideration of character, one finds it a composite of numerous lesser characteristics. These difficulties seem to be enhanced in any attempt to transmit to others the nature of Vermonters because it varies so widely from what is elsewhere typical of the twentieth century America, just as Calvin Coolidge could pass unnoticed in Vermont but was a continual enigma to the people of other sections. Despite the inherent difficulty, it is necessary to attempt an understanding because the influence of the typical Vermonter's temperament cannot be overemphasized in a study of the lease lands.

To begin with, it may be said to retain a definite flavor of the eighteenth and nineteenth centuries, and this is easy to understand in view of the minimum degree to which the impact of the twentieth century has been felt in Vermont. The relative isolation, previously noted, persists to a considerable extent. Despite the fame of Vermont marble, granite and machine tools, the area is essentially without large industry—even the railroads are relatively small institutions and retain a "hometown" aura. It has remained overwhelmingly rural—a region of small farmholdings and villages with few extremes of wealth. It has, in short, retained much of the "neighborliness" of early days in which folks knew each other well. Out of this one finds a *laissez-faire*, "live and let live" individualism flourishing and being nourished by a pronounced conservatism which can proceed largely unaffected by the greater present day stresses and strains experienced elsewhere. There is a tendency to assume the honesty of those with whom one deals. (This was remarked earlier in connection with the activities of boards of trustees.) There is a distinct reluctance toward initiating any action which will activate discord, and particularly is there a reluctance to have any such discord publicly aired. There is what some would view as an element of shiftlessness, at least by modern standards of business efficiency, or what others would prefer to call an easy-goingness, a willingness to let well enough alone. These are the attributes of Vermonters with which we

of the S. P. G. land agents, the grammar school records, and so on. The result is, of course, that the identity of a lease lot is ultimately lost. No real description will exist thereafter.

are particularly concerned in the study of the lands. A moment's thought will show one how such characteristics relate to several of the preceding conditions which have been included as factors adversely affecting status of the lands: amateur administration, carelessness with records, an inadequate procedure for conveyancing of land, indiscriminate terminology, even the early laxness in gaining control of the parcels of land.

More than these effects, however, the characteristics enumerated lead at times to what appears to be an unconcern for the potential income from the lands; in failure at times to exert a vigorous effort to gain control of lots or to identify them on the ground, even to a failure to require payment of rentals due. Indeed, the non-payment of rentals over a period of years may be regarded as one way in which individual lots have been lost sight of. The records show relatively few instances in which those administering the various lands have resorted to the courts for ejectment of unsatisfactory tenants, although the files carry many letters threatening such action, perhaps for years at a stretch. Nowhere did the writer find an orderly, systematic and complete catalogue of the parcels of land pertaining to any given grantee. By this is meant those lots on which rental income is, or has been, received, without considering the granted shares which have not been taken up. In relatively few instances was it possible to locate a lease-form, either in the hands of tenants or grantees, except for very recent leases.

It is realized that such a condition of affairs may be difficult of comprehension for readers from sections of the country in which metes and bounds, and titles to real estate, are normally matters of intense and meticulous interest. And so, at the risk of seeming to multiply examples, it is proposed to relate various situations and remarks which have come to the writer's attention, with the hope that they will collectively demonstrate some ways in which the Vermont character can affect the status of the lands. It should be borne in mind that the series here presented does not comprise isolated or unique instances, nor does it include all that were encountered. Rather, they have been selected to be representative of a general way of thought permeating the community.⁵⁶

The agent for one of the grantees stated that he had recently discovered a share for his principal in a town in which there had been three

56. As the nature of these illustrations will indicate, it has been thought best not to include the names or other identifications of individuals concerned in a paper open to public inspection. The writer, however, has complete references for each case in his files.

divisions of land. He thought he would go after those lots whenever he found the time for it. He was carrying the information only in his head, so the future of these lots depended on his memory of the case and on his continuing as agent until he had taken some action. In the meantime, the beneficiary is deprived of the income. Such procrastination is typical rather than unusual.

In another town it came to the notice of the agent of one group of lands that his share seemed to comprise six lots of approximately 100 acres each. He concluded that there must be some error as this was greatly in excess of the usual acreage per town and said as much to the town authorities. He believed that three such lots were proper. Instead of proceeding with a search of the records and an actual identification of lots, negotiations were conducted with the town authorities whereby he took three lots, with back rentals, and the selectmen took the other three. As a consequence of this procedure the correct status of these parcels of land is not at all determined, nor is it known whether his principal is deriving a just income from that town.

In one town the lots of one of the beneficiaries had not been known. The agent for this grantee became aware that the town charter allowed his principal a share, and he proceeded to identify the lots. Until then the tenants had assumed that they were in ownership of ordinary land and had been paying taxes thereon. Early in his operations it became evident that at least some of the tenants would become seriously disturbed to find that they lacked title to "their property." Rather than create an issue with them, the agent and the town selectmen agreed upon a plan whereby the tenants would be left in ignorance. They would continue to pay taxes to the town, and the town would remit the amount of the taxes to the land agent. Several points may be noted from this incident. It is without doubt an illegal transaction on the part of the selectmen. It obscures the true total of the town's grand list and the total of taxes collected. It leaves these parcels of land presumably subject to sale with warranty deed of ownership; whereas, they comprise land, the title to which cannot be cleared. It opens the way, in the future, to conditions like those described earlier.⁵⁷ And, in the future when the present agent and selectmen are no longer on the scene, it leaves the way open for any number of possibilities to develop.

A study of the lease lots included in the area under the State Forestry Service indicated a lot for one of the grantees in a certain town

57. *Supra*, pp. 88-90.

which, to the writer's remembrance, had not appeared in the records of the agent for that grantee. The agent was queried and stated firmly that he would not have a share in that town because it was not a Wentworth grant, but was of later vintage. This aroused the writer's curiosity, and it was followed up. The record in the Forester's office was correct. The town in question had been created from parts of three adjoining towns during one of the numerous adjustments of town lines. One of the adjoining towns was a Wentworth grant, and the lot in question had been so located that it fell within the portion going into the newly created town. The agent, in assembling the land for his share in the Wentworth town failed to locate the lot and simply concluded that his share had been excluded from one land division. To round out the point of this case, it should be added that this agent is one who is particularly proud of his energy and diligence in locating land to which his principal is entitled. The Forestry Service, in turn, instead of contacting him, had simply remitted to the town authorities as they did for those lots to the revenue of which the town was entitled, assuming that the town would pass on the money.

One of the interviews during this research was with an important officer of one of the largest and best known business institutions in Vermont. The interview was had because it was thought possible that the concern might be lessee to lease lands, or mortgagee of tenants of lease lands and that the firm might thereby be in a position to offer useful information respecting such lands. This did not materialize, but during the course of the conversation it developed that the official himself, in company with two friends, had a lease lot with a lake on it, for fishing. For our purposes, the interesting aspect is that, despite his prominence as a business man in a field of business much concerned with property, he did not know what beneficiary the land pertained to nor the terms of the lease. He simply accepted a statement of the annual lease rental as he was informed previous tenants had paid. He said he thought he might look it up sometime just for the interest of it. He "hadn't thought of this before." This is typical of the casual way in which these parcels of land are held.

The treasurer of one board of trustees told the writer that in one of the cities his principal had had four lots which paid a total annual rental of \$65.00. These were occupied by ten tenants. In order to simplify the treasurer's bookkeeping one tenant had received the varying payments from the several tenants and in turn remitted the total to the treasurer.

This intermediary died, and several years went by with no rental payments being made. The treasurer then wrote a circular letter to the tenants requesting them to select a new intermediary. Nothing happened. Still later the trustees arranged with a bank to do the collecting. The treasurer of the board, who had been concerned in all of this, told the writer that he has discovered that three of the lots are now paying the \$65.00 and the fourth lot, through an error of the town listing, has become taxed property, and he supposes taxes are being collected on it. He said that he does not care about that so long as he gets his full rent from the remaining lands. The circular letter to the tenants also provides an illuminating point in its last paragraph, herewith quoted:

I would suggest that you get together and fix this matter up and appoint some agent to do the collecting formerly done by Mr. _____. He formerly collected \$79.47 for this land, paying me \$63.60, himself \$4.00 and his wife \$11.87. I do not know why he paid something to his wife.

This treasurer is a prominent and successful attorney of many years standing and takes an active part in civic affairs.

Sub-leasing figured in an incident involving another beneficiary. The land in question was leased to a woman at an annual rental of \$40.00. She had made several sub-leases of parts of the parcel. Under the policy then followed by this land agency, she collected from the several sub-lessees and made a single remittance to the agent. Then a period of ten years passed during which no rent money was received, and the woman made the plea that she could not raise the amount. It was then discovered that she had regularly been collecting from the sub-lessees and keeping the money. Now the agent collects directly from the sub-lessees.

Besides illustrating the generally slack business methods practiced, the two accounts just related serve to illustrate the assertion that there is not apt to be a heavy pressure for collection of rents, nor toward actions of ejectment. In neither instance was there any action on the part of the respective agents toward ending the lease-contract.

In one town, the writer was informed that "there is quite a situation here respecting certain lots because someone made off with the records, and there is a question as to whether whoever did it is still collecting the rents."

One of the county grammar schools, which still exists as a land-holding board of trustees, but conducts no school, provided two inter-

esting points. Some time ago, the revenues from some of the lands were split up to go to towns in the county in which high schools are maintained. The treasurer of this board of trustees made the following statement: "No formal transfer of the lease is made when the land is transferred, but the lease thereafter is administered by the trustees of the high school. The lease transfer is apparently handled entirely by the legislative act setting up the high school." This man is an attorney, but was willing to relinquish lands without being fully acquainted with the basis for such action. He also went on to say that it seemed to him "a shaky matter, giving the town of _____ grammar school lands because that town does not have any secondary education." And yet the lands were so transferred.

An agent for one of the beneficiaries discovered not long ago that his grantee was among those given shares in a town which had not been exploited by that grantee. He found that there had been three divisions of land so that he could expect to locate three parcels of land. However, on further investigation the town proved to be a "small-sized" town, one of those compressed by the vagaries of early surveying of adjoining towns. And so he decided not to proceed toward securing the lots "because there was already so little land in the town."

Chapter IV

THE LEASE LANDS AND THE COURT: DURABLE LEASES AND ALIENATION

Adequate understanding of the Vermont lease lands can only be developed by an appreciation of the law relating to them, as it has been developed by the court and the legislature. Without this information, various questions remain unanswered, notably the question as to why such an institution should have survived. It will be seen, in the pages following, that the State of Vermont has pursued a legal course designed to protect and maintain the lease land system, even to the extent of diverging from customary Anglo-American legal concepts. In this process one finds a high degree of consistency on the part of both branches of the government. A very few instances will be observed in which either the legislature or the court have veered from the course. It will be seen that such occasions are unusual and each is explicable in terms of some specific circumstance. Indeed, the law may be considered as the one influence in which there has been a relatively consistent and positive viewpoint and program concerning the lease lands. The analysis contained in this phase will, in this respect, stand in marked contrast to those phases preceding and following it.

The ramifications of the subject matter of this part of the study indicate a primary division of the examination into two parts: a) the law as developed by the court, and b) the law emanating from the legislature. There are various points at which these two will have to be related, and cross-reference will be necessary. But on the whole, a clearer picture can be produced by such a procedure. For the most part a chronological, or historical, approach will be utilized which will enable the reader to follow the progress of the law from the inception of the lease land system to the present day. It fits the nature of the topic; the lease lands are vestigial historically and politically.

The judiciary's part will be reviewed first. The court has, in the main, been the more active and significant agency. Major legislation concerning the lease lands has been infrequent, although many other

statutes will possibly have affected particular parcels or groups of lands. In fact, for the purposes of this introductory study of the lease land system, it was found that the activity of the legislature, very largely, is best displayed by presenting tables of relevant acts in the appendix.¹

Despite some resulting repetition, the work of the court can only be seen fully by a further two-fold division of the treatment. The cases of interest, both those turning on lease land difficulties and others used for comparison, will first be analyzed by principal legal topics such as "adverse possession," "obligation of contract," "public use," and so on. In addition to this, however, there should be a review of the court's various decisions relative to each of the classes or groups of lease lands; this will develop in Chapter VII in connection with the analysis of their administration.

In the case of the legislature, the problem is somewhat simpler. For the most part a few major acts have covered all, or important portions, of the lease lands. Other, particular acts have been concerned with incorporating grammar schools, providing for the University and setting the responsibilities of town officers. One notable incident of important legislation which was preoccupied with a single class of lease lands deserves special comment as it will appear in both the activity of the legislature and that of the judges: the early efforts adverse to the interest of the Episcopalians.

The attitude of the court regarding the lease lands, and the several legal issues in which they have been involved, was found to be so pronounced that it appeared advisable to investigate the *Vermont Reports* beyond the limits of lease land cases. The purpose of the more extended inquiry was to determine general attitudes and positions of the judiciary in order to see to what extent the policy of protecting the lands might be regarded as a natural result of the prevalent judicial philosophy.² On the whole, it will be found that there is a considerable degree of correlation. This would appear to arise from a historical acceptance by the Vermont court of the early frontier conditions and the later continuing simplicity of society, as basic, and to be accommodated by the

1. See App. B.

2. Curiosity on this question was quickened by the sharp contrast of argument between the majority opinion and Judge Moulton's dissent in *University of Vermont v. Ward*, 104 Vt. 239 (1932). This case was intended by the majority to be conclusive. Moulton's dissent, however, was equally vigorous and attains added interest from the fact that he later became Chief Justice of the Court.

judges.³ There are a few sharp divergences, however, an example being found in the degree of tolerance toward tax exemption for the lease lands on the one hand and reluctance to grant such privilege to other charitable realty on the other hand. Such distinctions will be found to rest on legislative desires to which the court has been amenable or on the beneficent attitude of the judges toward the purposes for which the lease lands were set aside.

The results of the research for this and the succeeding chapter cannot be regarded by the writer with complete satisfaction. That is to say, it is not positively known that all relevant cases have been found. Two circumstances inhibited the possibility of certainty in this respect, and each deserves notice, as being indicative of the conditions in Vermont which can have influenced the status of the lease lands.

In the first place, this research was subject to the same unsatisfactory state of early records which would affect any legalistic study concerned with the early period of the state's development. The first court records are fragmentary and summary in content, where available. Unfortunately, this covers those years during which some of the fundamental attitudes were being established. For the purposes of this study, the fact is still more deplorable because the decades in question were a time of much turmoil and stress with respect to land settlement.⁴ It was also a period of consequence as to increase of population in the state,⁵

3. Judge Redfield displayed this viewpoint fully in his opinion in *Gorham v. Daniels*, 23 Vt. 600, 610 (1851):

We entertain no doubt that our system of conveyancing, so different from the English, so simple and intelligible to all, and so intended to be . . . from the very first, was designed to be entire in itself. And although most of its terms, and many of its forms of deeds, even . . . derived their meaning and operation to some extent, from the common law and the English statutes . . . yet it was no doubt the purpose of the framers of our laws upon conveyancing to have them '*understanded*' of the people, without the necessity of resorting to the study of the subject in other quarters. Such has been the practical construction of the subject by all, professional, or unprofessional, ever since.

The numerous opinions regarding judicial construction of deeds, wills and other instruments express strongly this same attitude; the court is regularly more concerned with the intention of the parties than with the legal technicalities of form.

4. This is illustrated by the content of the first published court reports, those prepared by Nathaniel Chipman, covering the years 1789-1791. Of twenty-five cases for which he wrote reports, ten of them are found to be suits in ejectment.

5. The writer's own Town of Weybridge provides a good example of the trend. In 1791 the population of the town was 175; in 1800, 502; and in 1850, 804. Hemenway, I, 110.

which in turn implies that it was a period during which the public rights of land would be subjected to the hazards of disorderly land occupation.

No provision was made for judicial reporting until 1797, and this effort proved to be inadequate.⁶ It was only in the session of October, 1823, that the legislature finally recognized the need and provided for the appointment of a Reporter to compile and publish the opinions of the state supreme court. Daniel Chipman was appointed to this office and devoted his energy to carrying out a stipulation of the act which required publication of cases decided earlier. The nature of his work, and, consequently, the nature of material now available, can best be seen by quoting his own words:

The act of the Legislature makes it the duty of the Reporter to prepare and publish such of the former decisions of the Supreme Court as he shall judge proper. On examination I find a number of former decisions which it will be useful to report: I shall first prepare and publish them, and then proceed to publish the decisions of the Court, in the order in which they shall be made. At the request of a number of Gentlemen of the Bar, I have selected a few cases from Chipman's Reports . . . I shall then report a number of cases previous to the year 1813⁷

Other than this belated compilation, there is recourse to a few slim volumes prepared by various judges on their own initiative. The earliest was that written by Nathaniel Chipman, already referred to. The others are Tyler I (1800) and Tyler II (1802), and Brayton (1815-19). In each instance, these volumes necessarily are limited to those cases

6. The nature of the situation can be grasped by the description of it written by Daniel Chipman in the preface to the first volume of authorized reports:

The Legislature seem to have entertained some idea of this, [the need for preserving the decisions of court cases] when in the year 1797 they passed an act requiring that each Judge of the Supreme Court, should make out his opinion in writing, and deliver it to the Clerk to be recorded in a book to be kept by him for that purpose. But it might have been foreseen that it was impossible for the Judges to comply with this requisition. The Judges made a circuit annually, holding a Court in each County for the trial of civil and criminal cases, and cases in Chancery. Under this system, the Judges could not possibly find time to consider the cases sufficiently to render judgments satisfactory either to themselves or to the suitors: how then could it have been expected, that each Judge could, in each case, make up and deliver to the Clerk his opinion in writing? This provision neither was nor could be complied with in any case. Gradual advances, however, were made towards an uniform system of Jurisprudence, greatly retarded by a frequent change of the Judges, and at times by high party excitement. . . .

1 D. Chip. (1789-1824), preface, p. 30.

7. *Ibid.*, preface, p. 34.

with which the compiling judge was directly acquainted. Furthermore, the conditions related by Daniel Chipman made brevity essential, so that the reports are extremely short and give little more than the decision and sometimes a skeletal outline of the issues. Consequently, there is a period of almost fifty years in which the records cannot be viewed with admiration. Following his compilation in 1 D. Chip., Daniel Chipman published a volume, 2 D. Chip., covering the year 1824. This was followed by Aikens I (1825-26) and Aikens II (1826-27), and then 1 Vermont appeared for the years 1826-28.

Although the regular publication of court reports commenced in 1824, it was only gradually that facilities and experience allowed the content of the reports to develop to satisfactory dimensions. The opening volumes of the series do not present the ample statements which are found later. Environmental conditions, generally, precluded records of the sort to satisfy the researcher. Chief Justice Powers has described them well in the following words:

Before we begin our study of the Court of 1834, and its members, it will be well to have in mind the conditions under which it functioned. The time was a hundred years ago. Vermont was a sparsely settled area. There was not a railroad within its borders. Public travel was by horse-drawn vehicles over primitive highways and toll roads or on horseback over marked trails. Communication between towns and villages was slow and somewhat uncertain. The Morse telegraph was not publicly used until ten years later. The executive branch of the state government consisted of a Governor and Council; the legislative department of a House of Representatives, which sat annually; the judicial branch, of a Supreme Court of five judges, which constituted the Court of Chancery, and whose members presided in the County Courts. When the Court of 1834 took office, American law books and reports were few in number and expensive to acquire. Massachusetts had published about thirty volumes of Reports, and New Hampshire had published five. Up to that time, and for many years later, our state made no appropriation for the State Library. However, by gift, exchange and otherwise, that library had acquired some twelve hundred and fifty volumes of legal and quasilegal publications. Bench and Bar were dependent mostly upon English decisions and textbooks for authorities. A partial and unsatisfactory reprint of the English Common Law Cases had been undertaken and partially carried out.⁸

8. Chief Justice George M. Powers, "The Supreme Court of 1834," *Report of Proceedings of the 57th Annual Meeting of the Vermont Bar Association*, 1934, XXVIII, 76-77.

In addition to all this, the present study encountered throughout the law reports the same lack of attention to the lease lands which has been discussed as one of the characteristics of the system in Vermont.⁹ There are available two digests of Vermont *Reports*.¹⁰ Each includes a topic section for the lease lands (in one it is called "public lands" and in the other "public rights"). It was quickly discovered that neither topic section was of any value for this research: cases of which the writer was already aware were not included. Hence, it became necessary to go through the *Digests*, page by page, accumulating a list of cases which appeared, from the nature of the digest briefs, to be possibilities. To illustrate, a given case involving lease lands would not be classified under "public lands" but might be found in the category of "adverse possession," with no clear indication that it had to do with the lands of interest here. It should be added that the topical sections devoted to the various groups of lands, such as "school lands," "ministerial lands," and so on, were no more to be relied on.

The volumes of the Vermont *Reports* each carry the customary index of cases. These indices were resorted to as a means by which to repair the deficiency in the *Digests'* classifications. Here, again, the lease lands had failed to impress the various Reporters. The classification title used is "public rights." It does not appear until volume 27 of the *Reports* (1856). Its next appearance is in volume 35 (1864). Thereafter, it appears only sporadically. In short, although the Vermont court has developed a law relating to the lease lands, of interest to the student, affecting a significant acreage of the state and of intense importance to individuals connected with the lands, no consciousness of the fact appears to have developed.¹¹ The result, for this study, is that it is not possible to assert that all of the lease land cases have been examined. It can, however, be stated that the list of cases in the bibliography is the only reasonably comprehensive compilation which exists.

9. *Supra*, p. 78.

10. Robert Roberts, comp., *Vermont Digest, 1789-1905* (Burlington, 1910), and Guy B. Horton, comp., *An Annotated Continuation of the Vermont Digest, 1905-1910* (Burlington, 1911); *Vermont Digest Annotated* (St. Paul, 1928, 1944), comp. and pub. under authority of the State of Vermont.

11. Furthermore, a few cases are to be found in which the subject matter and the phrasing of the opinion make it impossible to determine whether the land in question is lease land. See *Taylor v. Blake*, 109 Vt. 88 (1937), and *University of Vermont v. Carter*, 110 Vt. 206 (1939), as examples.

DURABLE LEASES

Among the various topics to be examined, that which stands forth as of preeminent interest is the doctrine developed in Vermont respecting so-called durable leases,¹² insofar as this form of conveyance is applied to the public lands. It is in this phase of the law that the Vermont court has moved away from the general Anglo-American position. And it is this doctrine upon which the continued existence of the lease land system, in its present form, is dependent.

With the exception of Judge Moulton's dissent, previously referred to, in the Ward Case,¹³ the court has been consistent in its reaction to durable leases of the lands under study. If there were earlier dissenters among the judges, it is not apparent from the published reports. Moulton's dissent is dignified as an exception, although it is not at present ruling court doctrine, because of several circumstances surrounding it. To begin with, the dissent is written strongly—almost, one might think, in a tone of emotional stress. Moreover, it was indulged in despite the obvious, and explicit, desire of the court to settle, once and for all, the issue of such durable leases.¹⁴ As was mentioned,¹⁵ he subsequently became Chief Justice of the Supreme Court—and evidently did not change his views: he adverted to them in an opinion written in 1936.¹⁶ Finally, in addition to the recognition given him by his advancement in the court, he is found to have had the deep respect of much of the legal profession in the state. Both the majority opinion and the dissent will be examined at the appropriate time.

In brief, the doctrine of the Vermont court is this: whatever may have been the common law position, and whatever may be accepted as the law of durable leases of ordinary realty, so far as the public lands

12. The term "durable lease" is herein used to denote leasehold rights granted in perpetuity. The customary form of expression of the term of such leases is "for as long as grass grows and water runs" (or variations thereof). The court has regarded this phrase as equating perpetuity. *Paine v. Webster*, 1 Vt. 101 (1828).

13. *University of Vermont v. Ward*, 104 Vt. 239 (1932).

14. In the majority opinion, p. 264, the court said:

. . . it has been argued with such earnestness that a durable lease of our public lands is in effect a conveyance of a base or determinable fee, and so many titles to our public lands are held under such leases, that we have considered the question in the hope that the true character of such leases may be settled for all time.

15. *Supra*, p. 100, n. 2.

16. *Jones v. Vermont Asbestos Corp., et al.*, 108 Vt. 79.

are concerned durable leases *are* leases and create the relation of landlord and tenant.

The first recorded case in which leases of public lands appear as a subject was *Selectmen of Rockingham v. Hunt* in 1817.¹⁷ It is to be noticed that there is no discussion recorded respecting durable leases. The record is brief and is quoted in full:

In an action of ejectment, where it appeared the defendant was in possession of the premises under a *lease*, from the plaintiff, and the cause of action was the non-payment of rent; the defendants cannot come in and be entitled to a time to redeem, i.e. pay the rent, etc., under the 76th section of the Judiciary Act.

This illustrates prior remarks respecting the inadequacy of early court records. No indication of the status of the lot or of the nature of the lease-hold is made. It can be fairly assumed that the lot was one of the public lands, in view of the nature of the plaintiff. But it cannot equally well be assumed that the lease was durable; at that period certain of the lands were leased for years. Hence, the only significance of the case is the presumption, from the report, that the court at that date accepted the idea of such lands being conveyed by lease.¹⁸ *Bush v. Whitney*¹⁹ soon after accepted the legislation respecting leasing of the confiscated glebe lots by the town selectmen and therefore voided an attempted conveyance in fee. Again, there is no specification of a durable lease, but, again, the court shows readiness to subscribe to the plan of leasing the public lands.

Oddly, the first reports dealing explicitly with durable leases do not involve public lands. *Paine v. Webster*²⁰ and *Arms v. Burt*²¹ both concerned leases between private persons of ordinary realty. Both conveyances were of the "as long as grass grows and water runs" variety. In the first case an annual rent was prescribed. The opinion of the court as to the nature of the conveyance fits the definition given in *University of Vermont v. Ward*²² of a fee upon condition subsequent. In the second case no rent was reserved, but covenants required lessee to perform certain benefits of maintenance to the lessor and his family. In

17. Brayt. 66.

18. This point is of interest in a comparison between Vermont and New Hampshire doctrines respecting disposition of public lands. See *infra*, pp. 135-138.

19. 1 D. Chip. 369 (1821). See *Laws of Vermont, 1805-1807*, 1805, pp. 127-129.

20. 1 Vt. 101 (1828).

21. 1 Vt. 303 (1828).

22. 104 Vt. 239 (1932).

this opinion the court described the conveyance as a fee determinable upon non-performance of conditions. It is to be seen that the court adhered, generally, to the common law position respecting durable leases, and from these rulings one could expect a similar rule for the public lands. However, this is not so and is one of the distinctions of Vermont law illuminating the interest in protection of the public lands.

The distinction was demonstrated no more than a year later in *Lampson v. New Haven*.²³ The town had conveyed the glebe lot in the form of a durable lease but had not reserved an annual rent, taking instead a note for \$1,500 from the lessee. The court viewed the situation as one in which both parties had acted in good faith and in ignorance of the limited power of the selectmen, but, nevertheless, followed the ruling in *Bush v. Whitney*²⁴ and voided the conveyance. For our immediate purpose, the important part of the ruling is that the court recommended the form of lease which has become customary for the public lands: “. . . they [the selectmen] shall have their election to execute to said *Barnum*, his heirs and assigns, a perpetual lease of said glebe lot, reserving a reasonable annual rent, with the right to re-enter for the non-payment of such rent, or for waste committed. . . .”²⁵ Here we find the court recognizing such a lease as being a conveyance of less than a fee.²⁶ This case is also of interest because the opinion carried a clear-cut statement of the reasoning upon which such conclusion was based, reasoning which has been followed since in cases concerning the lease lands. It is that the *cestui que trust* of the educational and religious grants include both present and future generations. If so, then disposition of the lands must be such that the avails can benefit those yet to come as well as those living at the time of the conveyance.

Again, a year later, the court maintained the distinction now established, in *Stevens v. Dewing*.²⁷ This was another case turning on a durable lease of ordinary realty, between private parties. The court adhered to the ruling in *Arms v. Burt*.²⁸ That is to say, that the lease conveyed a determinable fee.

Thus, in less than a decade, in a series of five cases, the court had

23. 2 Vt. 14 (1829).

24. 1 D. Chip. 369 (1821).

25. *Lampson v. New Haven*, 2 Vt. 14, 19 (1829).

26. This inference is inescapable inasmuch as the court had declared void the attempted conveyance.

27. 2 Vt. 411 (1830).

28. 1 Vt. 303 (1828).

made its position firm. However, in 1835 the court in *Maidstone v. Stevens*,²⁹ ejectment for a school lot, clouded the matter somewhat by saying that non-payment of rent is a breach of a *condition subsequent*, and does not in itself divest the estate. The issue in the case, however, was not the nature of the lease, but was on the constitutionality of the statute of 1818³⁰ which provided certain changes in the action of ejectment. On the other hand, *Strong v. Garfield* again clearly accepted such leases as being leases. The case was between private parties respecting assignment of a lease originally granted by the University, and the court used the words: “. . . but in an assignment merely of a leasehold estate.”³¹ This case has the added interest of being the first pronouncement respecting lease lands of classes other than those controlled by town selectmen.

In 1839 the court added its recognition of durable leases to still another category of public lands in *Caledonia County Grammar School v. Burt*,³² a case primarily concerned with impairment of the obligation of contract. The position of the University was reinforced with respect to durable leases soon after in *Keith v. Day*.³³ The case was one between private parties for recovery of damages on covenant in warranty deed as a result of ejectment proceedings in county court by the University for non-payment of rent. Notwithstanding the series of warranty deeds³⁴ which various individuals had passed, the superior title of the University was recognized.

After a lapse of fifteen years, the court again had occasion to speak respecting durable leases of ordinary realty in *Smith v. Blaisdell*,³⁵ and the old distinction was maintained. The lease was treated as conveyance of a fee upon condition, and the lessor was held strictly to the requirements of the common law of such instruments.

A quite broad application of the accepted doctrine is found in *Congregational Society of Newport v. Walker*. The matter was ejectment, and the land had been set to the right of the first settled minister. The Society showed no evidence of title except the lease, and the court held that this was sufficient: “As far as anything appears, the land may have

29. 7 Vt. 487.

30. *Laws of Vermont* (1824 compilation), ch. 7, no. 31, sec. 2.

31. 10 Vt. 497, 501 (1838).

32. 11 Vt. 632.

33. 15 Vt. 660 (1843).

34. See *supra*, p. 87, n. 49, for description of these transactions.

35. 17 Vt. 199 (1845).

been vested in a minister, duly settled, who has conveyed to the plaintiffs, and so have been appropriated to the use for which it was granted.”³⁶

University of Vermont v. Joslyn,³⁷ an action of covenant for payment of lease rent, should be noticed in passing as another tacit acceptance of durable leases. The case chiefly involved consideration of the matter of adverse possession and was largely argued on procedural questions. So, also, with *Orleans County Grammar School v. Parker*.³⁸ This case turned on problems respecting obligation of contract resulting from actions of the legislature. But in the course of the opinion, the court accepted the durable lease in question and applied the law of landlord and tenant.

S. P. G. lands are added to those considered by the Vermont court in *Propagation Society v. Sharon*,³⁹ but the S. P. G. did not fare well, losing claim to the land at issue as a result of adverse possession maintained during those years in which the legislature removed such protection from the S. P. G. rights. The case is of interest here because it reiterated the position taken in *Bush v. Whitney*⁴⁰ and *Lampson v. New Haven*⁴¹ that a fee passed if a durable lease failed to reserve an annual rent and right of re-entry, thereby implicitly accepting, for the S. P. G. leases, the established doctrine.

*White v. Fuller*⁴² had at issue county grammar school and town school lots in the Town of Belvidere. It is a case rich in *dicta* respecting lease lands and has been much cited by the court. It will, accordingly, appear under several topical examinations. Among other propositions the court was emphatic respecting durable leases of public lands:

We find in each [of the leases at issue] apt words for a lease, creating a tenancy with specific rights and duties as between the parties, reserving a substantial and adequate rent payable annually during the whole term of the holding, and authorizing a re-entry for the non-payment of the rent or the non-performance of the conditions.⁴³

The court went on to point out that in *Arms v. Burt*,⁴⁴ *Stevens v. Dew-*

36. 18 Vt. 600, 602 (1846).

37. 21 Vt. 52 (1848).

38. 25 Vt. 696 (1853).

39. 28 Vt. 603 (1856).

40. 1 D. Chip. 369 (1821), *supra*, p. 106.

41. 2 Vt. 14 (1829), *supra*, p. 107.

42. 38 Vt. 193 (1865).

43. *Ibid.*, p. 205.

44. 1 Vt. 303 (1828).

ing⁴⁵ and *Propagation Society v. Sharon*,⁴⁶ the trouble with the leases was that they lacked these qualities.⁴⁷

. . . leases of short duration tend to discourage agricultural enterprise and improvement, and, in the case of wild lands, are wholly impracticable, and we are satisfied that the legislature in conferring the authority to 'lease' such lands had reference to the meaning of that word according to its popular use rather than to its strict technical definition.⁴⁸

And again:

We have been unable to find any case in which a lease creating a tenancy and reserving an adequate annual rent, with a right of re-entry on the non-payment of the rent or non-performance of other conditions, has been adjudged to be void on account of being perpetual in its duration.⁴⁹

*Currier v. Rosebrooks and Town of Brighton*⁵⁰ was between rival lessees of a school lot. The case was in chancery. The court simply defined the relationships of the parties to show that any action should be at law and then dismissed the bill without prejudice. Nothing was said in the opinion contrary to the developed doctrine respecting leases.

Lemington v. Stevens,⁵¹ assumpsit for recovery of stumpage, was a somewhat involved case on various counts. As to durable leases, it has one element of interest. The selectmen had granted a single lease of all the town-controlled public rights for "as long as wood grows and water runs, or as we the selectmen have a right to lease the same." At that time, legislation limited leases on unsettled minister lots to five-year terms.⁵² The court held the lease valid and that the limiting alternative term had reference to the minister lot only.

45. 2 Vt. 411 (1830).

46. 28 Vt. 603 (1856).

47. This would appear to be an inadvisable use by the court of the first two of these cases. They did not involve public lands and had been treated by the earlier court as simple common law problems.

48. 38 Vt. 193, 206 (1865). This statement is consequential as introducing an argument in favor of durable leases of the public lands which has since then appealed to the sentiment of the court. The statement also illustrates what was said earlier of the court's propensity for acceding to the requirements of primitive social conditions.

49. *Ibid.*

50. 48 Vt. 34 (1875).

51. 48 Vt. 38 (1875).

52. *General Statutes* (1863), ch. 27, sec. 3.

Jamaica v. Hart,⁵³ ejectment for non-payment of rent, again supported the prevailing doctrine and has two specific points of interest. The first is the court's ruling that under provisions of *General Statutes*, Chapter 40, section 14, action of ejectment could lie without re-entry, or without a demand for the rent. The other point shows how far the court had gone by now in supporting durable leases of public lands. The lot at issue had been set to the grammar school right. In the absence of an established grammar school in Windham County, the legislature had in 1823⁵⁴ appropriated the right in Jamaica to the benefit of common schools in that town, and the selectmen had granted the lease in question under that act. The court regarded defendant as tenant of the town and avoided a ruling on the constitutionality of the act of 1823.⁵⁵ *Willard v. Benton*⁵⁶ accepted durable leases (it was another case of rival lessees), but in this case the court returned to the common law requirements as to demand of rent due and re-entry.⁵⁷

Franklin County Grammar School v. Bailey,⁵⁸ ejectment for non-payment of rent, will be more fully examined later as it was essentially a problem of obligation of contract resulting from a legislative attempt to redistribute certain lands. However, the apparent issue was the validity of a lease, and the court upheld the rights of the school as against the lessee.⁵⁹

53. 52 Vt. 549 (1880).

54. *Laws of Vermont, 1822-1826*, 1823, p. 10.

55. This is worthy of notice because the charter of Jamaica reserved "One share or right for the use of the County grammar Schools throughout this State." *Vermont State Papers*, II, 106. In *Caledonia County Grammar School v. Burt*, 11 Vt. 632 (1839), the decision had turned on this same phraseology of the grant of the grammar school right, and the court had held the legislature strictly to it, so distinguishing between that case and the earlier litigation in *Orange County Grammar School v. Dodge*, Brayt. 223 (1817).

56. 57 Vt. 286 (1884).

57. Interestingly, both *Jamaica v. Hart*, 52 Vt. 549 (1880), and *Willard v. Benton*, 57 Vt. 286 (1884), cited *Maidstone v. Stevens*, 7 Vt. 487 (1835), as authority!

58. 62 Vt. 467 (1889).

59. An exception might be taken here to the remark *supra*, p. 105 that Judge Moulton is the only recorded dissenter to the doctrine under consideration. In the report of the *Franklin School* case, *ibid.*, p. 480, the Reporter appended the following footnote:

This case was argued at the January Term, 1889, Franklin County, and was assigned to Ross, J., who then wrote the above opinion which was not concurred in by all the sitting judges. It was re-argued at the General Term, 1889, when the opinion was adopted by a majority of the court. [Royce, Ch. J. and Powers, J. dissented.]

Between this and the next case involving public lands, the court wrote opinions on several lease cases which involved private parties and ordinary realty. *Derrick v. Luddy*⁶⁰ and *In re Willard Fuller's Estate*⁶¹ merit attention because they both turned on leases of the "as long as grass grows and water runs" type. The former case also has the noticeable parallel circumstance for the public land cases in that the leased property had passed through several conveyances. It was found that the court continued to adhere to the early position respecting durable leases of other than public lands, as conveying a fee, but something less than a fee simple absolute. (In *Derrick v. Luddy* the lessor's recovery of unpaid rent was upheld.) And in the Fuller case the court held that such a lease "conveyed a fee in the use of land, liable to be defeated by the failure of the lessee to perform his covenants."⁶² *Rickard v. Dana*⁶³ is noteworthy because the court made clear the status of leases as to assignability, in such a way as to fortify durable leases generally. The opinion stated strongly that a lease which contains no provision against assigning or sub-letting is assignable, though it runs to the lessee without mention of his heirs or assigns.

*Churchill v. Capen*⁶⁴ is of interest as indicating how thoroughly accepted had become the doctrine respecting durable leases of public lands. It was a plea in chancery for reformation of an instrument, and most of the opinion is not relevant here, dealing with the principles of reformations. The Churchills held a perpetual lease on the lot in issue—a school lot located in Goshen but belonging to Chittenden as the latter town was reversioner and payee of the eight dollars annual rent. The Churchills conveyed the land to Capen on an ordinary printed form of warranty deed. They alleged that on that form they inserted a statement covering the leasehold status and the rent payable annually; that Capen later erased this portion of the instrument and then recorded the altered deed in the town clerk's office in Goshen; then, later, sued the

Inasmuch as the principal question in the opinion was on the status of the original grant and whether it constituted an irrevocable executed grant under the *Dartmouth College v. Woodward*, 4 Wheaton 518 (1819), and *Fletcher v. Peck*, 6 Cranch 87 (1810), doctrine, it has been assumed here that such was the basis for these dissents, rather than the question of the nature of durable leases. No dissenting opinion was written.

60. 64 Vt. 462 (1892).

61. 71 Vt. 73 (1898).

62. *Ibid.*, p. 76.

63. 74 Vt. 74 (1901).

64. 84 Vt. 104 (1911).

Churchills for breach of covenants of seizin as of fee, against incumbrance and of warranty. The basis of the prayer was that such reformation provided the Churchills their only adequate defense in the law suit.⁶⁵

Huntley v. Houghton⁶⁶ was essentially a case of construction of a deed as to boundaries of the land: a case in trespass. However, the land, which had been conveyed by deeds, mortgaged, foreclosed, and then deeded by the foreclosing bank, lay under original leases from the Londonderry Grammar School, and the court casually accepted these leases, in the course of interpreting data on which to construe the later deeds. The school does not otherwise appear in the case.

The last two cases have been considered somewhat out of chronological sequence, in order to clean up that period, before examining a group of three related cases, among which the two were sandwiched in point of time.

The three cases now to be reviewed are parts of a single litigation which extended over a decade: Caledonia County Grammar School v. Kent in 1910,⁶⁷ the same case in 1912,⁶⁸ and Powers and Peck, admr. for Judevine v. Caledonia County Grammar School in 1919.⁶⁹ The litigation, particularly the third case, is prominent in any consideration, in Vermont, of the lease lands, partly because it occurred relatively recently, partly because of the extreme effort made by the litigants, and partly because of the strong position taken by the court. Indeed, the opinions, and especially the last one, are so positive that it seems strange that the Ward Case⁷⁰ should have been necessary.⁷¹

The first case is not of extensive interest at this point. It will be

65. This situation also provides a nice illustration of the way in which lease lands can become obscured through changes in town lines and consequent shifting of jurisdiction. The Goshen authorities would have had no interest in the correct status of the lot: as lease land it would be exempt from Goshen taxes, and the lease rent accrued to the advantage of a different town.

66. 85 Vt. 200 (1911).

67. 84 Vt. 1.

68. 86 Vt. 151.

69. 93 Vt. 220. This case is customarily referred to as "the Judevine Case" and will be so designated herein.

70. University of Vermont v. Ward, 104 Vt. 239 (1932).

71. A sidelight worthy of brief notice is that in all three cases the county court was adverse to the interest of the grammar school, while in each case the Supreme Court reversed and favored the school. This relationship is noticeable as having occurred from time to time in other cases involving various of the public rights.

examined under other topics, such as adverse possession, titles by prescription, obligation of contract, etc. For the time being, it is chiefly useful for its narration of the background of the litigation. The action was a suit in ejectment for lot number 10 in range 18 in the Town of Hardwick. The town was chartered in 1781 to 67 proprietors, plus the customary five public shares.⁷² The grammar school, located in the Town of Peacham, was chartered in 1795. The charter provided that the school should hold and lease the appropriate public lands.⁷³ Hardwick was laid out in three divisions of six ranges each, each range having twelve lots. Each proprietor and public right was assigned one lot in each division. The grammar school leased its second division lot in 1797 and its first division lot in 1813, but never leased any lot in the third division.

. . . the lot in question was near the corners of Hardwick, Greensboro, and Wolcott, on a mountain more than four miles from any village, and not easily accessible . . . no one ever settled on it; and no evidence of occupation [appears] until around 1900 when executor of Judevine sold the timber and it was then stripped. . . . Plaintiff conceded its trustees had no knowledge of its right to the lot in question until 1908 or early in 1909, and had no knowledge that former boards of trustees knew about its right thereto. The plaintiff claimed that its grant was of a whole right, and that this right included a lot in each division. . . .⁷⁴

(An interesting sidelight on this is that all lots in the third division had been assigned and taken over by proprietors and the other public rights beneficiaries, except for this one lot.) Kent, the defendant, claimed under a deed from Howard in 1905, who had it by will from Alden E. Judevine.

The second case came to the Supreme Court following the county court action resulting from the remand order in the first case. Here it would appear that the defendant had in the meantime discovered evidence of a lease from an early board of trustees to Holton and Judevine, not presented in the earlier trial. From the opinion:

The defendant's evidence tended to show that by a perpetual lease the plaintiff leased the lot in question to her grantors Holton

72. *Vermont State Papers*, II, 91.

73. *Laws of Vermont, 1794-1796, 1795*, pp. 12-14.

74. 84 Vt. 1, 7 (1910).

and Judevine as early as 1847, and that they paid for such lease one hundred dollars as commuted rent. The [county] court instructed the jury to consider . . . whether the one hundred dollars, the payment of which defendant's evidence tended to show, was applied on this grammar school lot under such contract. Construing that question and the affirmative answer thereto in the light of the charge, the finding is, that the defendant holds possession of the lot in dispute under and by virtue of a perpetual lease from the plaintiff to the defendant's grantors, one hundred dollars being paid by the latter therefor in lieu of successive payments of rent at the end of regular stated periods during all future time. The plaintiff contends, that such a contract was not a lease within its power to execute ; but was an ineffectual sale of the land and void.⁷⁵

Still more information is available on the history of the situation in the opinion in the Judevine Case, the third and last of the efforts in this litigation :

The ejectment case being remanded to the county court for the assessment of damages, the bill in the present case was filed by the executors of Judevine's estate, and H. H. Powers and S. Blanche Kent, seeking to compel the Grammar School to execute such a conveyance as it had a right to make as of the date when the attempted conveyance was made, so that, as far as legally may be, the contract entered into more than half a century ago and alleged to have been acted upon in good faith during such long period of time, may be effectuated ; also praying for other and for general relief. . . . The lot in question . . . is found to contain 70 acres of land. Holton and Judevine went into the possession of the land at the time of receiving the attempted conveyance in controversy, thence continuing until 1867, when Holton sold his interest to Judevine who continued in possession down to his death in February, 1888 . . . the executors of Judevine's estate continued in possession until 1894 or 1895, when they sold the stumpage thereon to George T. Howard, and in 1905 they sold the fee to Howard. Later the latter, by warranty deed, conveyed an undivided third part of the same to the plaintiff Kent . . . it appeared in evidence that in 1848 the Grammar School attempted to lease the lot in question to Holton and Judevine . . . that Holton and Judevine paid one hundred dollars as rent for all time, and that this payment was completed on February 20, 1852 ; that perpetual leases with commuted rent were made by the said trustees in other cases, both grantors and grantees believing that they had a right so as to contract. . . .⁷⁶

75. 86 Vt. 151, 155 (1912).

76. 93 Vt. 220, 227-228, 230 (1919).

The narrative of the situation has been related at this length to point up the significance of the decisions and the court's position, expressed in the opinions. It can be seen that the grammar school had little to offer in extenuation. It had been negligent in the first place in its conveyance, it had very evidently been careless with its records, and it had allowed a long period of time to elapse during which no care of its land is evidenced. And yet, in every respect, the court found in favor of the school, or, at least, in support of the purpose of the school and the school lands grant. Moreover, it is apparent that the court felt strongly—the second and third opinions, particularly, are written in vigorous terms. Finally, in the third case, the court declared the decree in detail, and the assessments against the opponents of the school were severe.

The opinion in the second of the cases at law dealt at length with durable leases of the public lands:

It [the grammar school] was not authorized or empowered to convey the fee, nor the whole interest and estate of the County Grammar School therein. By the express terms of the grant the plaintiff was to *hold* the lands, as well as to lease them. The question then is, what was the legal effect of the so-called perpetual lease to Holton and Judevine in consideration of the payment by them of a single sum as the rent for all future time? . . . it is essential to a lease, that there be a reservation of a reversion in the grantor; for if the whole estate and interest which the grantor has, be parted with, the instrument is not a lease, but an assignment . . . it is clear, that the so-called perpetual lease from the plaintiff to Holton and Judevine, instead of being a lease, was in law an attempted conveyance in fee, and as a conveyance of such public lands it was void.⁷⁷

The following is an interesting exposition of the breadth of the protection which the court had by then spread over the public rights:

It is argued, however, that inasmuch as the plaintiff, by its charter, was authorized 'to hold and lease' the Grammar School lands in the several towns in the county, without any expressed restriction on the power to lease, either as to length of term or amount and kind of rent, a general power is given to be exercised in the discretion of the grantee of the power. It is true, that there is no provision in the plaintiff's charter nor by statute expressly specifying the term for which the Grammar School lands may be

77. 86 Vt. 151, 156 (1912).

leased, and it was held in *White v. Fuller*, 38 Vt. 193 (1865), that a lease of such lands, reserving an annual rent, with a right of re-entry on the non-payment of the rent or non-performance of other conditions, was not, because perpetual in duration, outside the lessor's authority by statute to execute. It is also true, that neither the charter nor the statute in express terms requires the reservation of annual rent. Yet it is not to be supposed that the Legislature intended the execution by the trustees of such leases or pretended leases as should defeat the main object of the grant. The use and purpose for which such lands were to be held and leased show, that the grant contemplated that they be so leased as to result in a yearly income therefrom for use in the support of the County Grammar School. Such income could be realized only by a reservation of rent payable annually, and we think it manifest from the whole act that this was intended by the Legislature. . . . At no time did the plaintiff, through its trustees, have a right to anticipate the future rents, or, in contemplation thereof, as we have seen, sell the lands and receive the pay therefor, to the injury of future generations equally entitled to the benefit of the use.⁷⁸

The tone of the Judevine opinion gives the impression that the court had lost patience with the whole business:

The Grammar School holds the land subject directly to a trust in the form of a power, and equity will not allow the corporation to deal with the estate in a manner inconsistent with the trust. . . . Since the power of the Grammar School, as to conveying the property is limited in the manner and purpose as stated above, the attempted conveyance in fee, established in the action of ejectment, was an act in destruction of, and a fraud on, the power, and instead of a court of equity giving sanction thereto, it will leave the plaintiffs to their remedy at law. . . . 'No point is better established than that *a person having a power must execute it bona fide for the end designed, otherwise it is corrupt and void.*'⁷⁹

And again:

The sale and conveyance of the estate . . . was not only a fraud on the power, as before observed, but also a fraud on the future objects of the power. The contract for such a sale was unconscionable on the part of the Grammar School; and it was also unconscionable in Holton and Judevine to obtain such a con-

78. *Ibid.*, pp. 157-159.

79. 93 Vt. 220, 227 (1919).

tract, knowing at the time the nature and purpose of the grant creating the power, and they made themselves a party to the fraud.⁸⁰

For the rest, the opinion adverts to the rulings in the second case at law and reasserts them with emphasis. It again distinguishes between a grant in fee simple and a lease, the latter requiring the reservation of a reversion. It reiterates the statement of the purpose of the grant—education of the youth of the state, and that this contemplates future as well as present youth. It dwells on the point that an annual income is the only means for assuring the accomplishment of this purpose.

The decree is subject to attention because of a provision in it which is a forerunner of similar provisions in legislation enacted in 1935 and 1937.⁸¹ The amount of money to be received by the school, a not inconsiderable sum, was “for the benefit of the Trustees of Caledonia County Grammar School, to be held by it and treated as a portion of the said trust estate, the yearly income whereof to be applied to the use contemplated by the trust. . . .”⁸²

Holton v. Hassam,⁸³ is notable mostly as an excellent illustration of the extent to which lease land in Vermont can become entwined in elaborate title difficulties. It concerned a Gospel lot and was a contest between private parties and their respective lines of claim to the lot. The court was agreeable to the idea of durable leases and, in fact, presumed the revocation of an early lease for non-payment of rent and consequent resumption of possession by the town.

Though not concerned with public lands, nor with durable leases, *Rosenberg v. Taft*⁸⁴ should be noted. The case reiterated a doctrine which had appeared in earlier cases⁸⁵ to the effect that in the absence of a provision against it, a tenant can sub-let without lessor's consent. The point is important. In connection with certain other legal positions, principally the law specifying against whom real estate taxes shall be listed,⁸⁶ it has contributed to grantees of the public lands losing sight of them.

80. *Ibid.*, pp. 237-238.

81. *Infra*, p. 134.

82. 93 Vt. 220, 244 (1919).

83. 94 Vt. 324 (1920).

84. 94 Vt. 458 (1920).

85. See *Cooney v. Hayes*, 40 Vt. 478 (1868), *Rickard v. Dana*, 74 Vt. 74 (1901), *supra*, p. 112. The ruling is found to continue at least as late as 1939 in *Dieter v. Scott*, 110 Vt. 376.

86. *Infra*, p. 195.

As has been remarked,⁸⁷ the leading case respecting durable leases is *University of Vermont v. Ward*.⁸⁸ The situation in this litigation varies, in one element, from the customary pattern of the durable lease cases. Whereas, they are mostly found to be ejectments for non-payment of rent, in this instance the action was tort and trover for damages for cutting and removing timber. The University had, early in its leasing program, established a form of lease to include a covenant that the lessee and his successors would maintain and reserve on the premises a specified acreage for woodland without committing strip or waste thereon, taking just so much timber as needed for family maintenance. In this lease thirty acres was so reserved. The covenant carried provision for re-entry and re-possession by the University just as in case of failure to pay rents.

The lease in issue had originally been granted in 1811 and had passed through various conveyances. In 1920, the administrator of the last possessor conveyed to Ward all the growing wood and timber on the premises, to be cut and removed within five years, which was done.⁸⁹

Durable leases became the central issue in the opinion by virtue of defendant's motion for a directed verdict "that upon the evidence, viewed most favorably for the plaintiff, the plaintiff has no title to or interest in the premises or property, reversionary or possessory, such as entitles it to maintain this action."⁹⁰

Although the majority opinion is lengthy (as is, also, the dissent) there is little new to be found in it. It is useful to the legal profession chiefly because of its earnest intent to quiet the question of durable leases⁹¹ and because it included a fairly full review of earlier cases and of pertinent legislation, as well as a summary review of historical conditions in the state.⁹² Perhaps the principal contribution of this opinion is the detailed analysis it contains of the nature of various forms of

87. *Supra*, p. 105.

88. 104 Vt. 239 (1932).

89. In view of the decision respecting damages, against Ward, it is interesting to notice that the administrator conveyed to Ward with the license of the probate court.

90. 104 Vt. 239, 245 (1932). This is the basis of the remark earlier (p. 113) that the opinions in the Caledonia litigation should have made this case unnecessary. In the light of those, and earlier statements by the court, it is difficult to explain the reasoning which would bring forth such a motion.

91. *Supra*, p. 105, n. 14.

92. Previous opinions had not gone extensively into precedent, relying on relatively few citations.

conveyance: base fees, determinable fees, fees upon condition subsequent, and durable leases. The court proceeded, then, to make explicit the fact that the common law cannot be used as a measure of the law of durable leases:

And it may be conceded for the purposes of this case that at common law the lease in question would, in legal effect, be a conveyance in fee. . . . Durable leases of public lands were unknown to the common law. A long-established and well-understood usage, which has received the express recognition and approval of the Legislature and this Court, has sanctioned such conveyances, and a departure from it now would unsettle and probably destroy many titles hitherto believed to be perfectly good. We are not required by any provision of the organic law of this State to adopt a rule of the ancient common law never heretofore applied to them, and subject to its operation a species of tenure unknown to the common law, but adopted early in the legislation of this State as best suited to secure the objects for which such lands were to be held and leased.⁹³

The court admitted that the legislation is not explicit on the matter of durable leases and in the course of its remarks displayed the extent to which the Vermont doctrine has actually been a judicial development:

While the intent of the Legislature as to the length of the term for which the University may execute valid leases of the college lands cannot be ascertained from the language of the statutes authorizing it to lease and rent them, there are other acts passed about the same time authorizing the leasing of other of the public lands which deal with this subject. These statutes are in *pari materia* and it is a familiar rule of interpretation that in the construction of a particular statute, all acts relating to the same subject-matter should be read in connection with it, as parts of one system.⁹⁴

But the usefulness of this statement is materially decreased by the further remarks in the opinion. The court considered the history of the Act of October 30, 1794, giving to the towns the S. P. G. lands, to be leased durably, and, unfortunately for the strength of the preceding quoted view, it concluded thus:

This is one of the first acts of the Legislature providing for

93. 104 Vt. 239, 251, 263 (1932).

94. *Ibid.*, pp. 252-253. This is inconsistent with the record of the court respecting interpretation of the provisions of the town charters, as to the grants. The court has insisted upon giving force to the most minute differences of phraseology.

the leasing of our public lands on long-term leases, and it is the only act which specifically authorizes and empowers the trustees of such lands to lease the same for 'as long as water runs or wood grows,' or for equivalent terms.⁹⁵

Another attempt, in the opinion, to credit the doctrine to the legislature was equally questionable:

. . . it cannot be questioned that the Legislature has the power to authorize trustees of the public lands to execute leases of such lands with terms co-extensive with the life of the trust, i.e., forever. This power is given to the Legislature by the reservation in the charters of the townships. . . .⁹⁶

At the very least, this can be said to create a misimpression; at the worst, it is clearly out of line with the record of the court in adhering to the minutiae of phraseology in the charters. Only the college right and grammar school right are found in the charters to be at the disposal of the legislature; in fact, in some charters certain of the rights are specifically at the disposal of the inhabitants of the town.

The court is at its best in the opinion, and on soundest ground, when it simply relies on the history of the situation:

It has been held by the Court, whenever the question has been raised, that neither the plaintiff, by its charter, nor the county grammar schools, by their grants, were authorized or empowered to convey the fee in the public lands granted to them or the whole of their interest and estate therein; that they have only the authority and power to lease said lands by leases reserving a substantial and adequate rent payable annually for the whole term of the holding, and authorizing a re-entry for the non-payment of the same or the non-performance of the covenants of the lessee. And the same construction has been given to the statutes authorizing selectmen to lease certain of the public lands located in their respective towns.⁹⁷

95. *Ibid.*, pp. 253-254. The use of this act in the opinion becomes even more difficult to find acceptable when it is remembered that the act was written in the heat of the effort to dispossess the Episcopalians, and was nullified by the decision in the U. S. Supreme Court, which voided the confiscation of the S. P. G. lots in *S. P. G. v. New Haven and Wheeler*, 8 Wheaton 464 (1823).

96. 104 Vt. 239, 251 (1932).

97. *Ibid.*, p. 248. This fails to cover the S. P. G. share. There has been no case in which the issue has been specifically determined respecting the authority of the Diocese to convey the fee in its lands. *Dictum* in *Propagation Society v. Sharon*, 28 Vt. 603 (1856), was perhaps to this effect, but the case, as has been seen, *supra*, p. 109, was a matter of adverse possession. However, the position of the court re-

And again:

It is a matter of common knowledge, of which we take judicial notice, that from the early days of this State the greater part of our public lands have been leased by 'durable leases,' that is, by leases reserving a rent payable annually, with a right of re-entry for non-payment of the same, and for the term 'as long as grass grows or water runs,' or equivalent terms. . . . It appears from the early statutes authorizing the leasing of our public lands and the Journal of the Legislature of 1794 to which we have called attention, that it was pressed upon the Legislature that leases of such lands on long terms were better adapted to the conditions which then existed than leases of short duration. Those conditions are a matter of common knowledge. The greater part of this State was covered with forests which had little value, if any, as timber. The land had to be cleared before it could be cultivated and made productive. . . . Settlers would not undertake the arduous task of improving these lands and making them productive unless they could be assured that they and their children would enjoy the fruits of their labors. This result, and a reasonable and adequate rent for the lands, could be secured only by long-term leases. . . . The various uses for which these lands were granted are perpetual. The titles of the trustees to these lands are indefeasible by the State and are as permanent, absolute, and effective as if the lands had been granted to a man, and his heirs and assigns forever. But the trustees have the power only to lease such lands.⁹⁸

Jones v. Vermont Asbestos Corp., *et al.*⁹⁹ is the latest lease land case of consequence.¹⁰⁰ It is an extremely important case respecting the lease lands and will be dealt with at length under various other topics,

specting the nature of the trusts established by the grants of the public rights, and its view as to the character, present and future, of the *cestui que trust*, have been constant and have not been limited, in their statement, to any particular groups of the lease lands. This at least allows the assumption that the doctrine quoted may well embrace the S. P. G. lands. The question has practical importance. Mr. Wilson informed the writer that he had pondered the problem of administration of the forest lots under his control and concluded that he would profit best by making just the type of lease conveyance which was so seriously discountenanced by the court in the Caledonia County Grammar School cases, 84 Vt. 1 (1910); 86 Vt. 151 (1912); 93 Vt. 220 (1919).

98. 104 Vt. 239, 252, 262-263 (1932). Judge Moulton's dissent is examined in App. C. As was stated, *supra*, p. 105, it deserves careful consideration. However, inasmuch as it is not ruling doctrine, it is not regarded as properly falling within the body of this analysis.

99. 108 Vt. 79 (1936).

100. Only one more follows it: Brown v. Derway, 109 Vt. 37 (1937). But this case was not one to attract any great attention.

principally the next, which will examine the matter of conveying the lease lands. However, it needs a brief treatment here.

The action arose from a petition filed by Lawrence C. Jones, the State Attorney General, for a declaratory judgment on the validity of Acts No. 65 and No. 239 of 1935. These acts, respectively, authorized the University and the Town of Belvidere to sell certain lease lands to the asbestos corporation. (They are defendants in the action, together with the corporation.)

Belvidere was chartered in 1791, the charter containing the following clause: “. . . also reserving for public uses the usual quantity of Land reserved in other townships, chartered by this State, to be laid out at the place of Beginning.”¹⁰¹ Lots numbered 162 to 169, inclusive, were set apart for these uses and held in common for them until 1862, when, under authority of Act of November 2, 1861, a committee of the legislature divided the rights. Lots 162 and 163, jointly, were divided into three parcels, one each for the college right, the Gospel right and the town school right.¹⁰²

It transpired that the area embraced by these lots contained a workable deposit of asbestos. The Vermont Asbestos Corporation had acquired the durable leasehold to the lots and desired to develop the mine beyond the operations of an earlier commercial effort. The leases called for annual rental payments of \$25 to the University and \$35 to the town. The corporation was not satisfied with its status, as a basis for large-scale developmental investment, because of certain ambiguous conditions in the law as to mineral rights vesting in the state. Hence, it proposed to purchase the lots. The University and town were agreeable; the prices offered were enticing: \$25,000 to the former and \$50,000 to the latter. The legislature was approached and was agreeable; hence, the two acts.

However, the rule respecting the inalienability of the lease lands had become so thoroughly established, following the Ward Case,¹⁰³ that there was some doubt whether the court would accept the two acts. The

101. *Vermont State Papers*, II, 18.

102. *Laws of Vermont, 1827-1831*, 1831, p. 12, had set and annexed a part of Belvidere to the Town of Eden. This area included lots 162 and 163. But, under the Vermont law, Belvidere retained its title to the latter two rights and the beneficial use thereof. Eden, consequently, does not figure in the case. The outcome was important to Eden, though, as it would make a difference in the assessable property in the town.

103. 104 Vt. 239 (1932).

Attorney General, nominally acting in protection of, and asserting the rights of, the undetermined beneficiaries, filed the petition. Actually, the purpose was to draw from the court a ruling on which to rely before the negotiations for the sales should progress to completion.¹⁰⁴

So far as it concerns the examination of the doctrine respecting durable leases, the case is not of extensive significance. It continued to accept such conveyances as valid, merely accepting the new legislation as broadening the scope of power of the trusts established by the grants. In fact, by implication, the laws—and the ruling of the court—fortify the durable lease doctrine. The opinion continues to adhere to the view that the beneficiaries include future generations. It accommodates this view to the revised status of the law respecting conveyances and alienation of the lands by stressing that it is simply the *res* of the trust property which is changed—that the purpose of the trust shall remain intact and that there shall be due provision, as the legislature thinks adequate, that the proceeds of the sale be kept intact. The most significant recognition, by the legislation and the court's opinion, of durable leases is the provision that such sales of the lands shall be "to the owner or holder of leasehold rights, but not to others except subject to such leasehold right, or simultaneously with the extinguishment thereof."¹⁰⁵

This is the 1936 decision, earlier mentioned,¹⁰⁶ in the opinion of which Judge Moulton made oblique reference to the Ward Case:

Although there is no specific prohibition of complete alienation in our Constitution or in any statute, it has been the law of this State from the earliest times that an attempted conveyance of the fee of public lands is void. . . . The authority conferred . . . by the statutes . . . to lease the lands has been, by decisions of this court, construed to include the power to execute so-called 'durable leases,' that is, conveyances of the 'as long as grass grows and water runs' variety, with covenants for rent and reservations of a right of re-entry for breach of condition . . . it was held . . . that these conveyances, when given with regard to public lands, were leases, the parties thereto standing in the relationship of landlord and tenant.¹⁰⁷

104. The court's doctrine had become firmly implanted in the consciousness of Vermonters. This is well illustrated by the fact that even in 1940, despite these acts and the broader legislation of 1937, the writer was gravely informed at the state capitol that the lands could not be sold. Apparently, the legal profession was likewise convinced—the county court found for the Attorney General.

105. *Laws of Vermont*, 1935, pp. 265-266.

106. *Supra*, p. 105.

107. 108 Vt. 79, 94 (1936).

The *Brown v. Derway* case in 1937,¹⁰⁸ the latest case involving the lease lands, is interesting only because the court continued the established practice of accepting the idea of leasehold rights. *Taylor v. Brown*¹⁰⁹ followed it and has to do with a durably leased lot, in an action of tort for trespass. It is not, however, herein classified as a lease land case because of uncertainty respecting it. The lessor was the selectmen of the town, and this would lead toward the supposition that the lot was lease land. However, towns have received other real property, some of which has been so conveyed. The report of the case fails to distinguish the situation. The inability to make a firm assumption is demonstrated by *Doubleday v. Town of Stockbridge*. Here the land in question was leased for 999 years by the selectmen and was quite evidently not public land (as of the charter grants) inasmuch as it was regarded by all concerned as taxable, the issue in the case being the party against whom the tax should be laid, owner or possessor. In fact, the court said: "It is clear that the land leased did not belong to that class of public lands which are exempted from taxation. . . ." ¹¹⁰ It is noteworthy, too, that the original lease arrangement included the same type of commuted payment to which the court had objected in various cases covering lands herein under study, and that in the case of this lot no such objection was found.

*Queen City Park Association v. Gale*¹¹¹ enters this study because the opinion accepted, and relied upon, the *Ward Case*¹¹² and the definitions therein of various conveyances. In addition, the opinion quotes several accepted sources for explanations of equitable restrictions and their effect on successors which go far to fortify the *status quo* respecting contractual rights established by the durable leases under examination.

Thus, it is to be noted that in almost a century and a half of litigation, the court permitted the loss of public lands in lease cases but once.¹¹³ On this occasion the loss occurred, not on the basis of the nature of the conveyance, but because the right in question had been subjected for a time to the provisions of the statute of limitation respecting adverse possession. Regularly, the court has distinguished between the nature

108. 109 Vt. 37.

109. 109 Vt. 88 (1937).

110. 109 Vt. 167, 171 (1937).

111. 110 Vt. 110 (1938).

112. 104 Vt. 239 (1932).

113. *Society for the Propagation of the Gospel v. Sharon*, 28 Vt. 603 (1856).
Supra, p. 109.

of durable leases of public lands, as granted in the town charters, and such conveyances of other real property.

ALIENATION

The associated topic of alienation of the lease lands has to some extent been observed during the preceding presentation respecting durable leases.¹¹⁴ Inasmuch as a number of such actions involved conveyances on which the court frowned, some consideration of those attempted conveyances occurred. There are other cases touching on the alienation of the lands by attempted conveyance. In addition, this aspect of the status of the lands must be regarded from the viewpoint of possibility of change of ownership through adverse possession, eminent domain proceedings, the construing of property lines, and so on.

Conveyancing

We have seen, in a series of cases, that the court has refused to accept the validity of conveyances which had the form of durable leases, but which were considered as violating the reality because they provided a commuted rent, or failed to secure a reversionary interest.¹¹⁵ The judges have, at various times, relied on the pertinent legislation as a foundation for their decisions. However, the writer's view is that the interpretation by Judge Moulton in the Asbestos Case¹¹⁶ is more in line with the facts—the judges have indulged in rather broad construction of the statutes, their meaning and intent, as well as their phrases, to develop the legal position that the lands could not be parted with by the grantees.¹¹⁷ The matter becomes particularly interesting in a comparison with the New Hampshire attitude.¹¹⁸

A few cases, besides those already observed, are to be discussed relative to the question of conveyancing of the lands by something

114. The writer meditated some on the practicability of treating the problems of durable leases and conveyances together, on the basis of their being so closely related historically and legalistically. It was concluded that the Vermont developments would be more successfully delineated by separate analysis.

115. *Bush v. Whitney*, 1 D. Chip. 369 (1821); *Lampson v. New Haven*, 2 Vt. 14 (1829); *Propagation Society v. Sharon*, 28 Vt. 603 (1856); *White v. Fuller*, 38 Vt. 193 (1865); *Caledonia County Grammar School v. Kent*, 84 Vt. 1 (1910); *S. C.*, 86 Vt. 151 (1912); *Powers and Peck, Admr. for Judevine v. Caledonia County Grammar School*, 93 Vt. 220 (1919); *University of Vermont v. Ward*, 104 Vt. 239 (1932); *Jones v. Vermont Asbestos Corp., et al.*, 108 Vt. 79 (1936).

116. 108 Vt. 79 (1936), *supra*, p. 124.

117. *Supra*, p. 120.

118. *Infra*, pp. 135-138.

other than a lease. A brief additional comment on *Bush v. Whitney*,¹¹⁹ however, is in order, to show how strictly the court held to the doctrine on non-conveyance. At the time the selectmen made the attempted conveyance in fee to Bush, they took in exchange another lot in the town "as and for a glebe." Even this, the court disallowed.

*Poultney v. Wells*¹²⁰ is of more concern elsewhere in this chapter—it was a matter of re-distribution of land avails, following a change in town lines. For this section, it serves, by inversion, as a forerunner of the decision in the *Asbestos Case*:¹²¹ The court made clear that the grant was irrevocable and the legislature could exercise no power over it, to vary the appropriation without the consent of the town. *But, with such consent* of the trustee of the grant, a change could be made.

In *University of Vermont v. Reynolds*, the college right was lost by the court's presumption of an adverse grant from another source. During the course of the explanation of why a presumption should be inferred, the court said, however:

. . . it is true that where there exists no power to make a grant, none can be presumed from a possession however long it may be. If it was necessary in this case to presume a deed from the trustees of the University to establish the defendant's claim, it would not be established, as the trustees never had any power to convey by deed.¹²²

*Williams v. Goddard*¹²³ demonstrates the preoccupation of the court with the program of maintaining intact the public rights. The case concerned a minister lot and was a matter of trespass. The court held that the wording of the grant in the charter of Concord, varying from the customary phrase in other charters, was determinant. The Concord charter went thus: ". . . lands to the amount of one right to be and remain for the purpose of settlement of a minister and ministers of the gospel in said town forever. . . ."¹²⁴ As the court saw it, this implied a succession of ministers. Hence, the town was precluded from conveying the fee in the lot to the first settled minister, duly settled though he was.

*Keith v. Day*¹²⁵ likewise displays the generosity of the court toward the grantees of the public rights.

119. 1 D. Chip. 369 (1821), *supra*, p. 106.

120. 1 Aik. 80 (1826).

121. 108 Vt. 79 (1936).

122. 3 Vt. 542, 560 (1831).

123. 8 Vt. 492 (1836).

124. *Vermont State Papers*, II, 47, 168.

125. 15 Vt. 660 (1843).

The University, in one of its occasional bursts of energy, brought action of ejectment for non-payment of rent against Keith, in Washington County court in 1839, and won. Keith then sued Day for recovery of damages on covenant of warranty deed. The case gains point when the record, in the report, of the conveyances by warranty deed is read. There had been an impressive number of such transactions, and the court accepted the proposition that they had been done in good faith. This would be possible only by virtue of a period of carelessness on the part of the University in administering the land. Yet the court readily recognized the superior title of the University and awarded plaintiff damages. Thus, as in the Caledonia County Grammar School action, and other cases, it is clear that the responsibility for noticing the restricted status of lease lands is not on the grantees of the public rights, but on him who would purchase.

On the other hand, *Pownal v. Myers*¹²⁶ allowed the conveyance of a minister lot. It is true that the circumstances distinguish the situation, to some extent, from the customary. One Gardner had, in 1789, been duly settled as minister and received the minister right. He had then deeded the land at issue, a portion of the right, to the town by deed of gift for "use and support of a gospel minister or ministers" in the town ". . . for the benefit of the town forever," to be "in trust," etc. In 1797, a town meeting agreed to sell the land, the money received to be loaned, and the interest to be devoted as had the land rental money. This was done. Forty years later, the town sued in ejectment to recover the land as having been wrongfully conveyed.¹²⁷ The court held against the town.

Pownal v. Myers requires careful attention. The court wished it to be leading: "We have been induced to go thus, at length, into this claim, in consideration of the importance of the question . . . and the necessity that the question should be decided at some time."¹²⁸ The "question" referred to is that of modification of trusts. Judge Redfield's opinion is strongly worded. It provides firm precedent for the outcome

126. 16 Vt. 408 (1844).

127. Any distinguishing of this situation becomes less significant by comparison with *Congregational Society, Newport v. Walker*, 18 Vt. 600 (1846), discussed, *supra*, pp. 108-109. The attitude of the court, in both cases, indicates the view that the minister right was still being devoted to its original purpose, even though it had returned to continuing public benefit by deed of the minister. The contrast in the rulings is especially remarkable upon recalling that the *Newport* case followed the *Pownal* case by only two years.

128. 16 Vt. 408, 415 (1844).

of the Asbestos Case.¹²⁹ And it is interesting to observe its relation to various cases between those two. It might be averred that the status of the lease lands, so far as the court is concerned, has resulted, perhaps, from inactivity on the part of the legislature to provide its positive approval of change.

Judge Redfield wrote to the effect that a trustee of real estate has always the legal estate. Thus, he can convey it as he sees fit; if the *cestui que trust* is *sui juris*, with his consent; otherwise, without such consent; in *all* cases, with the consent of the *cestui que trust* and the founder of the trust, or charity.¹³⁰

This is of the very nature of *all* trusts, or charities, and, indeed, of all contracts, that the scheme may be modified by the consent of all concerned. And it must also follow that this assent may be either express, or implied . . . either from circumstances or lapse of time, or both. . . . A modification of the scheme of a charity, in so unimportant a particular as the form of the investment, ought always to be presumed, when it was possible and has long been acquiesced in. If the modification goes to the very foundation and object of the charity, it ought not, perhaps, to be presumed, unless upon the very strongest ground, and then only upon such grounds as existed during the life of the founder.

. . . .¹³¹

It is to be noted particularly that there is no distinction made in the opinion between public and private trusts, although the plaintiff had argued for such a distinction. In fact, the court failed entirely to discuss the matter and wrote the opinion in such manner that it is to be inferred that no such distinction was acceptable. Thus, the court in this case went even further than did Judge Moulton in the Asbestos Case,¹³² in allowing a change in the *res* of the trust. It must be remembered, however, that the view of Judge Redfield has not been generally acceptable in the Vermont court, as respects the lease lands. If it were otherwise, his reasoning, especially that part of it in which he opens the way for presumption of acquiescence, would have formed a sufficient basis by which the court could have admitted the various leases which were disallowed because of a commuted rent.¹³³

129. 108 Vt. 79 (1936).

130. The same Gardner was a selectman in 1797 and was designated to be a member of the committee appointed to make the sale.

131. 16 Vt. 408, 414-415 (1844).

132. 108 Vt. 79 (1936).

133. A check of the case in *Shepard's Vermont Citations* indicates that it has been but little referred to in later lease land opinions.

Daggett v. Mendon¹³⁴ and Capen's Admr. v. Sheldon¹³⁵ are associated cases. They involved the same lot—the minister's right in the Town of Mendon—and both came to be concerned with the conveyancing of that lot. One Wellington, duly settled as minister, made a quit-claim deed of the lot in favor of the town in 1836. The town executed a warranty deed in 1872 to Daggett and Stratton, conveying the lot in fee for \$1,000. These gave a mortgage to the town for a part of the purchase price. Later the town foreclosed this mortgage. In 1876 the town gave a quit-claim deed to Daggett (Stratton having died in the meantime). On the same day Daggett quit-claimed the property to Capen.

The actions resulted from timber cutting on the property by an agent of Sheldon's, sometime prior to 1892. Sheldon claimed he was in by adverse possession, the original public right having been forfeited by non-observance of the charter requirement of settlement and cultivation within three years of the granting thereof. The Capen case was a claim of trespass; the Daggett action was against the town on covenants of warranty deed. The results, for our purposes, are somewhat ambiguous. The town argued that it was responsible only as to the later quit-claim deed, since the property had been foreclosed, as of the conveyance by warranty deed. The court held this argument good. The opinion is of most interest here in the fact that nowhere in it is there any reference to the property as having constituted one of the public rights.¹³⁶

The Capen case had been pending in county court since 1892, and it did not reach the Supreme Court until much later. The court did assert that "conveyances in fee of our public lands, when the statute authorizes only leases reserving rent, are void as conveyances . . . but they may operate as licenses to enter."¹³⁷ But then the opinion holds that such conveyances may give color of title if they contain a sufficient description and that when one quit-claims real estate of which he is in possession under color of title, that possession passes to his grantee, and the quit-claim gives the latter color of title. Thus, Capen's status. The court refused Sheldon's argument of a forfeiture. To begin with, forfeitures are odious in law and are never presumed, but must be proved. Furthermore, the requirement in the charter was not to be considered a limita-

134. 64 Vt. 323 (1892).

135. 78 Vt. 39 (1905).

136. The identity of the property, as being the minister right, was established by the writer after acquaintance with the later Capen case.

137. 78 Vt. 39, 47 (1905).

tion, but, rather, a condition subsequent. As such, it would not work a forfeiture for breach of condition "until the State asserts its right to enforce a forfeiture, and . . . the grant coming from the State, no individual can assail the title for non-performance of the condition."¹³⁸ Basically, the court evaded the issue of interest here, going so far as to admit Capen to having color of title,¹³⁹ reasserting the invalidity of conveyances in fee of public lands, but failing to void the transaction.

The Asbestos Case¹⁴⁰ essentially presented the same views as those expressed by Judge Redfield in *Pownal v. Myers*,¹⁴¹ but Judge Moulton was more restrained respecting such points as presumption of acquiescence, and the possibility of accepting modification of a trust to the extent of modifying the purpose. It was stated earlier¹⁴² that the case is of the greatest importance in respect to a study of the lease lands. This is because, as a result of the decision respecting the two acts of 1935 (which had had a limited application), the 1937 legislature passed a similar act which provided for such conveyances of the lease lands, generally.¹⁴³ Hence, the Asbestos decision can be regarded as a turning point in the Vermont law respecting disposition of the public lands granted in the town charters.

The crux of Judge Moulton's opinion is basically simple: that the new legislative provisions merely served to increase the power, or enlarge the grant or gift, beyond the limits previously existing.¹⁴⁴ He considers the nature of trusts, in respect to these particular grants, and, in that much, differs materially from Judge Redfield's treatment in *Pownal v. Myers*.¹⁴⁵ Judge Moulton explicitly distinguishes private and public trusts:

The petitioner herein takes the position that, since voluntary trusts have been created, without an express power of revocation

138. *Ibid.*

139. To round out the unsatisfactory terms of the case, the court concluded that, although Capen was in under color of title and constructive possession and Sheldon was without right in the land, the decision was in favor of Sheldon because there had been shown no master and servant relationship between him and Williams, who did the actual cutting.

140. 108 Vt. 79 (1936). See *supra*, pp. 123-124 for recital of circumstances.

141. 16 Vt. 408 (1844).

142. *Supra*, p. 122.

143. *Laws of Vermont*, 1935, pp. 78-79, 265-266; *ibid.*, 1937, p. 89.

144. The significance of this point will be seen better after examination of the various rulings respecting the position of the legislature in relation to the obligation of contract.

145. 16 Vt. 408 (1844).

or modification, the corpus cannot be changed without the consent of all the parties interested, including the beneficiaries. . . . If this were a case involving a private trust there would be force in this contention. There is, however, no doubt that these lands are held to public charitable uses all the elements that distinguish a public charitable trust from a private trust are present.¹⁴⁶

On this latter point he said that public charity begins where uncertainty in the recipient begins. He holds to the traditional view of the court: that the beneficiaries of the Gospel and school lands held in trust by the town are those present and future inhabitants of the town who join in social worship or avail themselves of educational advantages offered by town schools; and the beneficiaries of the college lands include all persons now living or who may be born hereafter who are or who may be entitled to become students at the University. Hence, the benefits of the lands were conferred by the state upon an uncertain and indefinite number of persons.

Since the lands were, before the issuance of the charter of the town, under the control and disposition of the General Assembly, the reservation of the lands was, in effect, a grant or dedication to public uses. This places the General Assembly in the position of founder of the trust, when consent of parties to the trust is necessary for modification of the trust. Hence, the General Assembly had the power to authorize conveyance in fee simple of public lands held by the town and University in trust for educational and religious purposes, without the consent of the beneficiaries, where the trustees were given discretion to convey the lands, *if the conveyance would be advantageous to the beneficiaries and would be without destruction or modification of the purposes of the trust.*¹⁴⁷ As to the town, the power of the legislature cannot be found in the unrestrained power of the state over the property of municipal corporations held and used for governmental purposes—"the principal is not applicable to lands held in trust for educational or religious purposes."¹⁴⁸ After an examination of various cases from other states ("for we have none of our own"), he concludes:

146. 108 Vt. 79, 91 (1936).

147. Italics are to emphasize the limitation which he included and which had been rather cavalierly minimized in *Pownal v. Myers*, 16 Vt. 408 (1844).

148. 108 Vt. 79, 93 (1936). He takes occasion to point out that, although the law elsewhere may prevent municipal corporations from holding as trustee for religious purposes, "our law has been otherwise from the earliest times." *Ibid.*, p. 89. This is another point at which Vermont law has cut its own cloth. In *Williams v. North Hero*, 46 Vt. 301 (1873), much was made of certain legislation

. . . an inherent authority appears to lie in the Legislature as a part of its general authority. . . . Instead of interfering prejudicially with any vested interest or estate which [had been] acquired in the premises under the former act, it confirmed and enlarged that already granted, by turning a qualified power of alienation into an absolute one. It was a new and additional gift to the one already made . . . or in other words, a release by the donor to the donee, of a condition annexed to a previous grant.¹⁴⁹

With respect to both the town and the University, he stresses that the acts are permissive rather than mandatory, presumably to avoid any difficulties on the score of the Dartmouth College¹⁵⁰ and Fletcher v. Peck¹⁵¹ doctrine.

Having established the general proposition that the authority of the legislature is adequate to the purpose of the two acts, he proceeds to consider the particular problem of a modification of the trust without the express consent of the beneficiaries, this being a central point in the petition of the Attorney General:

No judicial support for the proposition that the consent of the beneficiaries of a public charity is requisite to the validity of a sale of the trust property, under legislative authorization with provision that the proceeds shall be held subject to the trust in the place of the property sold, has been called to our attention. The decisions upon which the petitioner relies do not go to this extent . . . what the court was speaking about was not the land but the income from it, which obviously could not be diverted, or partly diverted, from the purposes for which the grant was originally made without destroying the trust to the extent of such diversion. . . . The point in issue was not the sale . . . but the application of the proceeds. . . . Where the Legislature authorizes a sale of the property of infants or other persons not *sui juris*, it does so in its capacity as *parens patriae*. The same principle applies in the case of a public charity. . . . As to those persons who may hereafter become entitled to the benefits of the trust, there is a want of capacity to manage and preserve the property,

which made religious affairs a matter for private associations. But the case is out of line. Regularly, the Vermont court has accepted the religious lease lands as a municipal responsibility.

149. 108 Vt. 79, 96 (1936). This quoted remark was directed at his view of the situation in *Welch v. Silliman*, 2 Hill (N. Y.) 491. He admits that the decisions cited involved private trusts, "But the reasoning of the decisions, particularly of the latter, is applicable here." *Ibid.*

150. 4 Wheaton 518 (1819).

151. 6 Cranch 87 (1810).

and hence the necessity of devolving this duty upon the sovereign represented by the Legislature.¹⁵²

He cites the Dartmouth College ruling to the effect that the potential rights of such students "are, in the aggregate, to be exercised, asserted, and protected by the corporation."¹⁵³

In treating of the petitioner's allegation that the acts failed to make adequate provision for the future safeguarding of avails of such sales, the opinion leaves the situation fluid and provides the legislature with plenty of elbow-room:

As for the claim that the Legislature has failed properly to provide for safe investment of the funds received from the sales so that they may be kept from depreciation or loss, all that need be said is that this was a matter for the General Assembly to decide. . . . It is enough if the General Assembly, acting according to its judgment, in view of the existing facts, comes fairly to the conclusion that the conversion will be for the benefit of those entitled.¹⁵⁴

(It is noticeable, too, that this also provides the court, in the future, with an opportunity to exert its influence.)

A final point in the opinion is important to this study, though it was made in relation to the problem of mineral rights, with which we are not concerned:

If the lands here in question come within the description of 'public land belonging to the people of the State,' these sections [relating to sovereign rights to mines and quarries¹⁵⁵] will cease to have any application because, after the sale, the property will be of a private nature and no longer public land.¹⁵⁶

This, as is apparent, is of crucial importance because it would apply, as the statement stands, to the whole matter of tax exemption.

While the opinion, of course, dealt directly only with the two acts in question, and those acts were limited in application, the decision must be regarded as affecting the status of all of the lease lands in Vermont. Based on it, the 1937 legislature extended the authority to all of the lands. The question might be raised that a fine legal distinction is possible as to the effect of the opinion on lands in the "Wentworth towns,"

152. 108 Vt. 79, 98-102 (1936).

153. *Ibid.*, p. 102.

154. *Ibid.*, p. 103.

155. *P. L.*, secs. 8208-8211.

156. 108 Vt. 79, 103-104 (1936).

as distinct from the "Vermont towns," only the latter having been granted by authority of the General Assembly. This is not tenable. The problem of the "Wentworth towns" has been faced by the court in cases not involving lease lands. *Bennington v. Park*¹⁵⁷ is definitive. The Town of Bennington had argued that towns antedating the Revolution antedated the State of Vermont and consequently held a reserved sovereignty, on the same line of reasoning by which the states, antedating the national government, held a reserved power under the United States Constitution. The opinion of the court, in an ample statement,¹⁵⁸ makes it clear that the towns in existence when the Vermont constitution was formed have no reserved sovereignty peculiar to themselves and not enjoyed by all other towns in the state. The opinion very clearly leaves the "Wentworth towns" and "Vermont towns" on the same footing in every respect.

We have seen, in the record respecting durable leases, and those other cases concerning conveyancing of the public lands, that the Vermont court has adhered to the proposition that the lands granted in the town charters for public use have been inalienable. The exceptions to this rule stand out by their rarity, the fact that they have lacked influence in later decisions, and that they have involved particular sorts of circumstances. It is fair to assert that the law in Vermont, until the 1935 and 1937 legislation, has maintained the identity of the lease lands as public lands.

New Hampshire Doctrine

It is to be remembered that the practice of reserving a portion of the land chartered as a town, for "public, pious and charitable uses," was introduced into Vermont affairs from New Hampshire. The Wentworth charters west of the Connecticut River, in this respect at least, followed the form of charters for towns east of the river. One would tend to expect that customs would be parallel where the genesis was common and where the two jurisdictions were adjacent geographically and were similar socially. Such is not the case. Vermont proceeded on its own in determining the proper disposition of the public lands. A view of the New Hampshire law highlights the significance of Vermont's doctrine.

157. 50 Vt. 178 (1877).

158. *Ibid.*, pp. 202-204.

Baptist Society in Wilton v. Town of Wilton¹⁵⁹ presents an ample statement of the New Hampshire position. It was a case in assumpsit for \$300 had and received.

In the 1749 charter of the town there was the following reservation: "one share for the first settled minister, and one for the ministry, and one for the school there forever. . . ." ¹⁶⁰ The share for the ministry, consisting of three lots, was taken possession of by the grantees and the profits of it used for hiring preaching. In 1763 the inhabitants and grantees granted the use and income to one Livermore as part compensation, and he settled there. In 1765 the town was incorporated. After Livermore ceased to be the minister, the town applied the lots to the use of the ministry until 1803. At that time the lots were sold by the town. The proceeds, \$2,500, were set up as a fund and the interest used for procuring public religious instruction. Until 1818 there was only a Congregational religious society in the town. Then a Baptist society was set up and incorporated, and it settled a minister. The members paid about one-eighth of the taxes raised in the town. They demanded their share of the interest of the fund, which the town refused to pay to them.

The opinion of the court is so strong and complete a statement of the law of that state that it is quoted at some length:

It seems always to have been understood in this state, that lands originally reserved in the respective towns for the use of the ministry, were the property of the towns; and lands of this description have always been occupied, and sold, and transferred by the respective towns claiming them as the absolute property of the towns. . . . A general opinion seems to have prevailed in this state, that the lots reserved by the proprietors of the townships for the ministry and for schools, were intended to aid the first inhabitants in educating their children, and in procuring religious instruction, and thus to induce individuals to become inhabitants of the town. That those lots were intended as an absolute gift to the inhabitants of the towns, to be applied to those purposes at their discretion; and that, in fact, they were not intended to be vested in the towns in trust, to apply the rents and profits to those objects; but were, in truth, given as a temporary aid to the first inhabitants. It is certain that towns have always claimed and exercised the right of selling and conveying the lots reserved for the ministry and for schools, at their pleasure, and we are not aware that this right has ever been called in question. . . . No

159. 2 N. H. 508 (1822).

160. *Ibid.*

doubt was ever entertained that the first settled minister became the absolute owner of his share in fee simple, free from all trusts, and it was not very unnatural that towns should suppose that they were the owners of the other two shares in the same manner. . . . No provision was made by law to preserve any trust supposed to exist in these reservations. . . . Whether these reservations might not have been considered originally as trusts, which towns were bound to apply specifically to their intended objects, it is unnecessary now to inquire. It is enough that the inhabitants of our towns have generally viewed them in a different light, and have acted accordingly, and that they cannot now be viewed as trusts, without great public inconvenience. . . . It was not intended that the towns should hold the reservations in trust, to apply them specifically to those purposes, but they were absolute gifts, intended merely to augment the ability of the inhabitants to procure instruction for themselves and their children. . . . The land sold belonged to the Town of Wilton, and the money arising from the sale, is the property of the town, and not the property of individuals. . . . And we are of the opinion that if this were a trust fund, the law would be the same. The reservation was general, 'for the ministry,' leaving the management of the trust to the discretion of the town.¹⁶¹

Not only does this statement stand in direct contrast to Vermont law respecting alienation; it differs elsewhere, as well. It is to be noted that the Wilton charter reservation included the word "forever," which the New Hampshire court passed over. The Vermont court, on the other hand, has made much of the presence of the word in some of the charters of the state. It will be seen later that the two courts view trust conditions differently,¹⁶² and a pronounced difference of view exists as to the discretionary authority of the towns, as against responsibility to the state—the donor and founder of the trust, in the Vermont view. As the New Hampshire court said, it was there to be considered that the grants were absolute gifts to the towns. The Vermont court has refused to think of the lands thus. The New Hampshire court accepted the idea that the grants were in aid of the first inhabitants¹⁶³; we have seen that the Vermont court has thought of the beneficiaries as both present and future inhabitants.

161. *Ibid.*, pp. 509-512.

162. In fact, even in the Asbestos opinion, 108 Vt. 79 (1936), Judge Moulton was careful to insist on the inviolability of the trust created by the public grants. Only Judge Redfield, in *Pownal v. Myers*, 16 Vt. 408 (1844), took a position aligned with the New Hampshire doctrine.

163. See also quotation from this New Hampshire case, *supra*, p. 18, n. 39.

Curiously, Judge Moulton, in his dissent in the Ward Case,¹⁶⁴ did not use the Wilton case in his attempt to draw a moral from the law of the "sister" state. He relied on *Piper v. Meredith* and the following statement therefrom: "In reality the plaintiff's estate is not a leasehold at all, for it is well settled law that a perpetual lease upon condition conveys to the lessee a determinable or base fee. . . ." ¹⁶⁵ It is to be presumed that he did so because the latter case spoke specifically on perpetual leases. For use in Vermont, it is not a strong citation. The land in question in the Piper case was not an original grant of public land in the town charter but had been conveyed to the town by Piper's predecessor. Actually, the case points up the contrast in the ruling law in the two states—New Hampshire fails to distinguish perpetual leases of public lands.¹⁶⁶

In fact, the Vermont court recognized the difference in the law of the two states in *Williams v. Goddard*:

A case is also cited for the defendant . . . showing that in that state [New Hampshire] the rights reserved by charter for the support of the ministry, and for the support of schools, are regarded simply as appropriations in aid of the respective towns, and subject to their unqualified control and disposition. It was therefore held that those lands might be sold and converted into other funds at the discretion of the town. This is directly in conflict with the doctrine supported and enforced in this state. The use of such reservations are considered as unalterably fixed by the charter, though subject to legislative regulation as to the manner of their enjoyment.¹⁶⁷

The difference was observed, too, by Judge Story in the opinion in *Town of Pawlet v. Daniel Clark, et al.*¹⁶⁸ in which he recognized the New Hampshire law, as described a few years later in the Wilton case.¹⁶⁹

Influence of Common Law

The doctrine in Vermont is sufficiently peculiar compared to the general law of realty so that it is useful to observe the basis from which it could have been developed. Accordingly, a few cases, of various sorts,

164. 104 Vt. 239 (1932).

165. 83 N. H. 107, 110 (1927).

166. The Piper case, however, is useful in considering the problem of taxation.

167. 8 Vt. 492, 500 (1836). See *supra*, p. 127 and *infra*, p. 148 for other examinations of this case.

168. 9 Cranch 292 (1815).

169. 2 N. H. 508 (1822).

have been examined by which to determine the extent of influence of the common law on Vermont jurists.¹⁷⁰ Of these, only the Ward Case deals with lease lands. In lease land cases, the court has not been explicit on the Vermont relationship to the common law; it has simply asserted the developed Vermont doctrine, as assumed.

To begin with, the Vermont legislature adopted the common law, with important reservations, by statute in 1782¹⁷¹ and has, from time to time, renewed this declaration, without changes of consequence. The court can be seen to have taken a pragmatic attitude toward the common law itself, as well as toward the legislation referring to it. A review of the cases collected does not give a thoroughly consistent record. There are instances in which the court has written as though the common law were of unmodified influence. Such are found in *Whiting v. Burlington*¹⁷² and *State v. Sylvester*.¹⁷³ The former concerned the right of the city to authorize a bond issue; the latter was a criminal case alleging malicious injury of a dog. In the former, the court ruled that the common law adopted in Vermont is in all courts a rule of decision, which means that the common law is the law of the state and is to be administered as such by the courts, and except as modified or repealed by statute, common law rules and principles determine the rights of, and prescribe rules of conduct for, all persons, which rules are to be applied by the courts in all cases to which they are applicable. And in the latter case, the court held that the rules of the common law are not to be changed by doubtful implication, nor overturned except by clear and unambiguous language. The court cited *Lorenz v. Campbell*¹⁷⁴ as having used the same language.

However, such statements by the court are less frequent than those

170. *Gorham v. Daniels*, 23 Vt. 600 (1851); *Le Barron v. Le Barron*, 35 Vt. 365 (1862); *Clement v. Graham*, 78 Vt. 290 (1905); *Swanton v. Highgate*, 81 Vt. 152 (1908); *Johnson v. Barden*, 86 Vt. 19 (1912); *In re Heaton's Estate*, 89 Vt. 550 (1915); *University of Vermont v. Ward*, 104 Vt. 239 (1932); *E. B. and A. C. Whiting v. City of Burlington*, 106 Vt. 446 (1934); *State v. Sylvester*, 112 Vt. 202 (1941).

171. Slade, *State Papers*, p. 450. An earlier act, passed February, 1779 (Slade, *State Papers*, p. 288) is interesting in that it adopted the common law ". . . as it is generally practiced and understood in the New-England States . . ." rather than ". . . so much of the common law of England, as is not repugnant to the constitution or to any act of the legislature of this State . . ." as it was stated in the 1782 act.

172. 106 Vt. 446 (1934).

173. 112 Vt. 202 (1941).

174. 110 Vt. 200 (1939).

which provide much lee-way in the application of the common law. Customarily, one finds the court more than reluctant to be bound closely by the ancient rulings.

The orientation of Vermont judicial thinking respecting use of the common law was established by Nathaniel Chipman. The volume of reports which he published contained, besides, two interpretative essays written by him: one on the statute adopting the common law; the other on the then statutory law on conveyances. For the most part, the court has continued in the path marked by him. It jibes with the general attitude of the court remarked earlier.¹⁷⁵ The essence of the court's position is this: First, that the common law shall not be applicable where it is repugnant to the constitution or statutory laws. There is nothing unusual, of course, in this. But, secondly, the court has held to the position that the common law shall not prevail where it is inconsistent with "the local situation and circumstances." It is by this attitude that the Vermont jurists have contrived the legalistic elbow-room needed for accommodating such positions as those developed in respect to durable leases of public lands and municipalities holding as trustee for religious purposes. One finds this flexibility insisted upon and reiterated in case after case. Even in the *Whiting v. Burlington*¹⁷⁶ opinion, the court at another point in its exposition included the critical proviso. And it is noticeable that the court's position is most evident in cases concerning real property (due, possibly, to Nathaniel Chipman's influence, as represented by his specific interest in conveyances).

The relevant part of the *Gorham v. Daniels* opinion has been quoted earlier¹⁷⁷ but merits reference here because of the explicit stress on the needs of a frontier community. *Clement v. Graham* is of particular interest because the opinion held that the statute of 1782, adopting the common law of England, was largely declaratory of the common law as here practiced and understood.¹⁷⁸ *Village of Swanton v. Town of Highgate* had to do with a matter of taxation of a municipally operated utility. The opinion does not speak directly respecting the common law, but does contain the following comment which clearly indicates that the Vermont jurists have had in mind the concept of a local "common law" development:

175. *Supra*, p. 100.

176. 106 Vt. 446 (1934).

177. 23 Vt. 600 (1851). *Supra*, p. 101, n. 3.

178. 78 Vt. 290 (1905).

. . . and courts must have regard to [the] course and usage of government, and to the objects for which taxes have been levied by a long course of legislation, and what objects and purposes have been considered necessary to the support, and for the proper use, of the government, whether state or municipal; and whatever lawfully pertains to this, *and is sanctioned by time and the acquiescence of the people*, may well be held to belong to the public use, and proper for the maintenance of good government.

. . . ¹⁷⁹

The most complete statement of the Vermont position was found in *Johnson v. Barden*, and much of the relevant portions of the opinion are quoted at length in order to demonstrate how forthrightly the court has put its views:

Nathaniel Chipman considered that many of the rules and maxims resulting from the system of feudal tenures were 'full of absurdity' and were not operative here; that the English lawyers and judges had been 'habituated to pursue the rights of real property through a thousand intricate ambages and circuitous labyrinths;' and that so far as transfers of real estate are concerned the rules of the common law, applicable here, are few and simple. . . . Pursuant to these views, the intention of the parties has prevailed in the State in the construction of deeds unless such intention was contrary to some positive law, and no rule of construction, unless statutory in character, has been recognized as positive law . . . we have no case in which a mere rule of construction has been allowed to override the intention. . . . It seems to have been recognized from the first that the division of a deed into such parts as the premises, the habendum and the tenendum was pretty much a matter of capitalization and punctuation, and our Court was never greatly impressed with the idea that it is of vital importance. . . . In refusing to recognize the rule in *Shelley's Case* as positive law in this State, our Court took a step which emphatically demonstrated that mere technicalities have here a very limited application. . . . The doctrine in this State was from the first applied so deliberately and with such conscious departure from technicalities that it is unprofitable to consider just how fully it is recognized in other States in consequence either of judicial decisions or of legislation.¹⁸⁰

*In re Heaton's Estate*¹⁸¹ enunciated the same attitude in relation to the construction of wills. English decisions before the date of separa-

179. 81 Vt. 152, 157 (1908). Italics mine.

180. 86 Vt. 19, 24-27, 30 (1912).

181. 89 Vt. 550 (1915).

tion, as well as those after, are to be taken merely as declarative of the common law, and not as binding precedents to be followed. And it will be recalled that the Ward Case opinion was equally outspoken in the matter of interpreting the nature of durable leases.¹⁸² The Ward Case, it should be remarked, reasserted the proviso by which the effectiveness of the common law, in Vermont, is to be limited by the local situation and circumstances.

Attitude Respecting Construction of Instruments

This whole position was sufficiently beguiling that it seemed advisable to determine to what extent it was actually practiced by the court. Hence, a considerable sampling was made of the cases of judicial construction of instruments—deeds, wills, charters, etc.¹⁸³ As with the cases just above, the majority of those read were not concerned with lease lands, but served to demonstrate the general position of the court, in comparison with its attitudes toward the public grants.

To some extent, the cases cited are selected at random; to some degree they appear as a by-product of the procedure described earlier¹⁸⁴ by which the effort was made to find the lease land cases. The only systematic aspect of their selection was an effort to cover a sufficient time spread to indicate whether a given position were free of particularistic influences, and whether a given position appears as a steady, continuing doctrine. The emphasis is on cases dealing with land deeds, as that offers the closest comparison to the conveyancing of the lease lands. Construction of statutes deserved some care inasmuch as the lease land cases have frequently depended on that judicial activity. A few cases concerning charters are presented. A few cases involving wills are included, which indicate that the attitudes of the Vermont court are effective beyond Nathaniel Chipman's particular interest in conveyancing. Much of what the court says is to be found in the words of other courts, especially as to the significance of the intention of parties. The Vermont court stands out, however, for the steadfastness with which it does what it says and for the forthrightness of its words.

The numerous cases cited below,¹⁸⁵ ranging over more than a cen-

182. 104 Vt. 239 (1932). *Supra*, p. 120.

183. This was the major point of interest in extending the law research in order to compare the majority and dissenting opinions in the Ward Case, 104 Vt. 239 (1932). *Supra*, p. 100, n. 2.

184. *Supra*, p. 104.

185. Strong v. Garfield, 10 Vt. 497 (1838); Adams v. Dunklee, 19 Vt. 382

ture of adjudication, are consistent with the pragmatic flexibility of thinking expressed above with respect to the common law. They deal with a variety of issues: the significance of the *habendum* in a deed; the effectiveness of an un-sealed deed; the influence of the word "heirs"; agreements to lease; boundary determination, as to lot lines and quantity of land; easements. The tenor of them is harmonious: that people are not to be frustrated by adherence to legal technicalities. Representative statements are recited from a few of the opinions to provide a substantial demonstration of the character of the Vermont court.

Adams v. Dunklee held: "It may be remarked, that the rules for the structure and exposition of deeds of conveyance are emphatically of the artificial and technical class. . . ." ¹⁸⁶ In Gilkey v. Shepard the court said: "Deeds, like other instruments, should be so construed as to give effect and carry out the intention of the parties." ¹⁸⁷

As to chancery, Quinn v. Valiquette ¹⁸⁸ held that a bill in equity to remove a cloud upon the title to real estate is addressed to the discretion of the court, which is to be governed by general rules and principles as far as it can be, but which, at the same time, grants or withholds relief according to the circumstances of the particular case when those rules and principles furnish no certain measure of justice between the parties.

Bennett v. Bennett illustrates the court's attitude toward the structure of an instrument: "The habendum in the deed, when repugnant to the grant, yields to the manifest intent and terms of the grant." ¹⁸⁹ And in Cutler Co. v. Barber: "The intention of the parties must govern, if

(1847); Town of Colchester v. Culver, *et al.*, 29 Vt. 111 (1856); Smith v. Hastings, 29 Vt. 240 (1856); Congregational Society, Halifax v. Stark, 34 Vt. 243 (1861); Flagg v. Eames, 40 Vt. 16 (1867); Thompson v. Carl, 51 Vt. 408 (1878); Gilkey v. Shepard, 51 Vt. 546 (1879); Chapman v. Longworth, 71 Vt. 228 (1898); Quinn v. Valiquette, 80 Vt. 434 (1907); Huntley v. Houghton, 85 Vt. 200 (1911); De Goosh v. Baldwin and Russ, 85 Vt. 312 (1912); Johnson v. Barden, 86 Vt. 19 (1912); J. H. Silsby & Co. v. Kinsley, 89 Vt. 263 (1915); Bennett v. Bennett, 93 Vt. 316 (1919); Cutler Co. v. Barber, 93 Vt. 468 (1919); Clarke v. Mylkes, 95 Vt. 460 (1921); Bragg v. Newton, 98 Vt. 102 (1924); City of Burlington v. Mayor of City of Burlington, 98 Vt. 388 (1925); Vermont Kaolin Corp. v. Lyons, 101 Vt. 367 (1928); Addison County v. Blackmer, 101 Vt. 384 (1928); University of Vermont v. Ward, 104 Vt. 239 (1932); Kennedy v. Rutter, 110 Vt. 332 (1939); Parrow v. Proulx, 111 Vt. 274 (1940); Hopkins the Florist v. Fleming, 112 Vt. 389 (1942); Nelson v. Bacon, 113 Vt. 161 (1943).

186. 19 Vt. 382, 387 (1847).

187. 51 Vt. 546, 550 (1879).

188. 80 Vt. 434 (1907).

189. 93 Vt. 316, 318 (1919).

it can be ascertained from the language used in the deed.”¹⁹⁰ And, again, in *Clarke v. Mylkes*: “The form is not decisive of its character, and the mere use of technical words or phrases which have a definite signification cannot be allowed to defeat a contrary intention. . . .”¹⁹¹ *Bragg v. Newton* further illuminates this position of the court: “. . . various rules of construction are called to our attention. But it is to be remembered that the rules are adopted for the sole purpose of removing doubts and obscurities so as to get at the meaning intended. . . .”¹⁹²

Another, oft reiterated view is found in *City of Burlington v. Mayor of City of Burlington*: “And in construing the language of a deed, the situation of the parties, the surrounding circumstances, the subject-matter of the grant, and the object and purpose sought to be accomplished by it, may be considered.”¹⁹³ Likewise in *Addison County v. Blackmer*: “The situation and character of the property, for the benefit of which the grant was made, and other circumstances then [1816] existing, are for consideration.”¹⁹⁴ And *Bragg v. Newton*¹⁹⁵ also emphasized the view that when the meaning of an instrument is doubtful, resort may be had to the practical construction adopted by the parties.

The same philosophy was displayed in those few cases on wills which were inspected.¹⁹⁶ The last case cited below presents amply the position:

The one rule of construction to which all others are servient and assistant is that the meaning intended by the testator is to be ascertained and given effect, in so far as legally possible. To determine such meaning, the court is to take the instrument by its four corners, consider it in all its parts, and give effect to its language read in the light of the relation of the parties concerned and the circumstances attending its execution.¹⁹⁷

With respect to construing legislative statutes, the court has been at least as broad-minded, if not more so.¹⁹⁸ In the *Caledonia County Gram-*

190. 93 Vt. 468, 473 (1919).

191. 95 Vt. 460, 463 (1921).

192. 98 Vt. 102, 104-105 (1924).

193. 98 Vt. 388, 397 (1925).

194. 101 Vt. 384, 388 (1928).

195. 98 Vt. 102 (1924).

196. *In re Willard Fuller's Estate*, 71 Vt. 73 (1898); *In re Heaton's Estate*, 89 Vt. 550 (1915); *In re Robinson's Estate*, 90 Vt. 328 (1916); *Huestis v. Manley*, 110 Vt. 413 (1939).

197. 110 Vt. 413, 420 (1939).

198. See *Edwards v. Roys*, 18 Vt. 473 (1846); *Caledonia County Grammar School v. Kent*, 86 Vt. 151 (1912); *Scott v. St. Johnsbury Academy*, 86 Vt. 172

mar School¹⁹⁹ case it was held that a thing which is within the intention of the makers of a statute, although not within the letter, is as much within the statute as if it were within the letter, and where necessary to give effect to the evident intent of the legislature, the court in construing a statute must disregard even the plain letter of the act. And in the Ward Case²⁰⁰ it was held that the guide to the meaning of a statute is the evil it was designed to remedy, and for this the court may properly look at the contemporaneous situation. In *Town of Brandon v. Harvey*, Judge Moulton, somewhat inconsistently with his dissent in the Ward Case, wrote:

The fundamental rule in statutory construction is that the intention of the Legislature is to be ascertained and given effect. . . . If the language employed leaves the intent in doubt, extrinsic matters, such as history of the enactment, etc., may be called in aid.²⁰¹

The court was even more emphatic in *First National Bank of Boston v. Harvey*:

If it can fairly be done, a statute must be so construed as to accomplish the purpose for which it is intended, and the intention and meaning of the Legislature are to be ascertained and given effect, not from the letter of the law, which is not in all cases a safe guide, but from an examination of the whole and every part of the act, the subject matter, the effects and consequences, and the reason and spirit of the law, although the intention and meaning thus ascertained conflict with the literal sense of the words.²⁰²

A pertinent example of the court's operations is to be found in the treatment accorded a series of acts which had as their purpose the inhibiting of land speculation. The first statute "to prevent fraudulent speculations," etc., was passed in 1807. It provided:

(1912); *University of Vermont v. Ward*, 104 Vt. 239 (1932); *Town of Brandon v. Harvey*, 105 Vt. 435 (1933); *First National Bank of Boston v. Harvey*, 111 Vt. 281 (1940); *In re George S. Walker Estate*, 112 Vt. 148 (1941); *Snyder v. Central Vermont Railway, Inc.*, 112 Vt. 190 (1941); *In re Swanton Market Area*, 112 Vt. 285 (1942); *Notte v. Rutland Railroad Co.*, 112 Vt. 305 (1942).

199. 86 Vt. 151 (1912).

200. 104 Vt. 239 (1932).

201. 105 Vt. 435, 439-440 (1933).

202. 111 Vt. 281, 290 (1940). This from a court, the personnel of which are dependent on the legislature for their judicial office! In Vermont the members of the Supreme Court are elected by the Senate and House of Representatives, in joint assembly, biennially.

. . . that all bargains, sales, deeds, leases and other conveyances of lands, etc., where any person shall be in actual possession of said lands, etc., claiming the same by possession, or in any other way, adverse to the lessor, vendor, or grantor, shall be null and void, and of no effect in law, to convey said lands. . . .²⁰³

The court construed this as being merely a legislative declaration of an established principle of the common law and intending no new limitation. Hence, rulings were to the effect that such conveyances were good between the parties to them and that this allowed a recovery by the grantee, in the name of the grantor, which should inure to the benefit of the grantee. Following such rulings, the legislature revised the act in 1839, so that it declared such conveyances absolutely void and of no effect. Yet, in *University of Vermont v. Joslyn* the court took cognizance of this change and said:

. . . yet I do not apprehend it was the object of the legislature, by the introduction of the word, 'absolutely' into the Revised Statutes, to change the operation of the common law principle, or the law as declared in the statute of 1807. . . . The decisions, then, which have been had at the common law, are applicable under our statute; which I regard only in affirmance of the common law.²⁰⁴

This preoccupation with the practical consequences of adjudication runs strongly through all the cases cited during this examination, as well as others noted during the research. Reconciliation of form and phrase with intent is demonstrated fully in *Hull v. Fuller*:

It is a general rule that where the intent of the parties is satisfactorily ascertained, and their contract can be carried into effect, agreeably to that intention, incongruities and inconsistencies are to be reconciled; and such parts, as through misapprehension tend to defeat that intent, are to be discarded.²⁰⁵

The one field of construction in which the court was not found to be consistent was in respect to charters. For the most part, there appears to have been a tendency to construe charters very strictly. This is noted in respect to cases involving lease lands and is true both for town charters and corporation charters, such as those granted to the grammar schools. Only two instances of broad construction were encountered. One was

203. *Compiled Statutes* (1850), p. 171. It was finally repealed in 1884.

204. 21 Vt. 52, 61 (1848).

205. 7 Vt. 100, 105 (1835).

discussed in Chapter III.²⁰⁶ The other was *Williams v. North Hero*²⁰⁷ which had to do with disposition of a minister lot. As it needs comparison with certain prior adjudication, discussion of it will be deferred for proper chronological arrangement.

Town of Charleston v. Allen was an action of ejectment respecting a minister lot. For the present, it is enough to observe the court's attitude respecting the charter:

. . . it is not in the power of the court, by any known rules of interpretation, to correct the procedure, since the spirit and reading of the grants manifestly exclude these missionary and apostolic portions of the Christian ministry from the benefits of these public gratuities, to the infant settlements.²⁰⁸

The court took notice of the various phraseology of the grants in different town charters, and accepted the differences, as read: "It is a Vermont charter, and differs from the New-Hampshire grants, and also from some of the Vermont charters."²⁰⁹

*Lord v. Bigelow*²¹⁰ is not a lease land case. It concerned the Town of Wheelock and turned on the question of whether Lord was successor in office of Dr. Wheelock as president of Moor's Charity School, in relation to the grant in the town charter, and the wording thereof. At the time of the grant of the town, John Wheelock was head of both Dartmouth College and Moor's Charity School, and the grant ran to the benefit of both institutions. Some indication of the Vermont court's strict attitude toward charter phraseology is found in the fact that the court caused the case to revolve around the following wording in the town charter:

. . . whereas the Hon^{ble} JOHN WHEELOCK . . . for & in behalf of the Honorable Trustees of said College; & in behalf of said School, has applied . . . for a . . . Tract of unappropriated Lands within this State, for himself as president of said College and School & his successors in office & for the Trustees of said College & their Successors. . . . We . . . grant the tract . . . unto him the said John Wheelock as president of sd School & to the Trustees of sd College the said Wheelock

206. *Supra*, p. 75, n. 34. *Pownal v. Myers*, 16 Vt. 408 (1844), might be regarded as a further possible exception.

207. 46 Vt. 301 (1873).

208. 6 Vt. 633, 641 (1834).

209. *Ibid.*, p. 639.

210. 8 Vt. 445 (1836).

as President and for his Successors in Office to have and to Hold the one moiety of said premises as above Described solely and exclusively for the use & benefit of said School forever and the said Trustees and their Successors in Office to Have and to Hold the other Moity solely and exclusively for the use & Benifit of Dartmouth College forever with all the privilidges & Appurtenances thereunto belonging and Appertaining which are also hereby Granted to the President and Trustees. . . .²¹¹

Williams v. Goddard has been considered in respect to conveyancing.²¹² It will be recalled that the court held that the particular charter phrase precluded a fee going to any minister :

The whole question therefore must turn on the manner in which this right is granted or reserved in the Town Charter. . . . There is a diversity in these grants and reservations. In some charters the right is simply reserved for the first settled minister in the town. In others, it is reserved for the first settled minister, to be disposed of for that purpose as the inhabitants of the town shall direct. Thus far the land is evidently destined, upon a legal and sufficient settlement of a minister, to vest absolutely in such minister as private property. . . . The terms of the charter in this instance are different still. . . . This reservation does not purport to be for the settlement of one minister only, but of a minister *and ministers*, which would include a succession of settled ministers. And that this succession was intended is quite evident, from the terms of perpetuity . . . in short, the language of the charter in reference to this right seems to forbid the supposition, that the estate was to become absolute in the minister settled.²¹³

Caledonia County Grammar School v. Burt,²¹⁴ which arose as a result of a legislative attempt to redistribute certain of the grammar school lands between schools within the county, is an instance in which the court was strict in respect to both the charter of the town and the charter of the corporation of the school. In the case of the town charter the court drew a fine distinction between the grant of the college and grammar school rights, on the one hand, and the grant of the other three public rights, on the other hand—although the word “forever” stands so as to apply to all five rights, the phrasing was held to be such

211. *Vermont State Papers*, II, 215, 218.

212. 8 Vt. 492 (1836). *Supra*, p. 127.

213. *Ibid.*, pp. 498-499.

214. 11 Vt. 632 (1839).

that the word "inalienably" affected only the first two rights. As to the school charter:

The legislature annexed to the [Peacham school] grant the express provision that a future legislature might distribute the avails of all such lands among the several counties; thereby clearly showing that they understood that, by the grant, they parted with all control of the lands, except what they expressly reserved.²¹⁵

Thus, although the lands might at some future time be redistributed among the several counties, to the loss of the Peacham school, they could not be so redistributed to other grammar schools within the county. This becomes the more significant when it is recalled that the original concept of the grammar schools had been in terms of one to a county and that it was only later that the development of the state led to expansion of educational facilities so as to call for more than one secondary school per county. In *Corinth v. Newbury* the court said: "The title to land in our townships, is derived entirely from the *charters*, which must determine the geographical limits for that purpose; and they cannot be extended or contracted, even by legislation."²¹⁶

The two cases of *Montpelier v. East Montpelier*²¹⁷ carried the court into some difficulties, as a result of this policy of strict construction of charters. The City of Montpelier was incorporated by act of 1848²¹⁸; the character of that act, coupled with the wording of the original charter of the old town of Montpelier created the difficulty:

. . . and we have no doubt, the effect of the act of 1848, dividing the town of Montpelier, was to abolish the old municipality of Montpelier, and to create two new and distinct municipalities out of the same territory, included in the old municipality. . . . From the peculiar and explicit language of the act, it is clear. . . . If, by the act, the town had been simply divided, creating East Montpelier a new municipality out of a part of the territory included in the old town of Montpelier, the old municipality of Montpelier, might, by implication, have continued to exist with a curtailed territory. And this I think, has been the usual mode that has been adopted in the division of towns.²¹⁹

215. *Ibid.*, p. 640.

216. 13 Vt. 496, 500 (1841).

217. 27 Vt. 704 (1854); S. C., 29 Vt. 12 (1856).

218. *Laws of Vermont, 1845-1848*, 1848, pp. 5-7.

219. 27 Vt. 704, 707 (1854).

The original town charter of 1781 had placed the rights of public land "under the charge, direction and disposal of the inhabitants of said township forever."²²⁰ The court held that:

The individual inhabitants of the township, as incorporated in 1781, may be regarded as the beneficiaries, or *cestui que trusts*. All the right which the old municipality of Montpelier could have had to these funds was as trustees. . . . There is nothing in the case to show any consent of the inhabitants of the old township to a division of these trust funds, between the two new corporations.²²¹

Furthermore:

The effect of the act of 1848, of our legislature, being to abolish the trustee of these funds, created by the charter of 1781, and the act of 1848 being inoperative, to create a valid division of the funds between the two new towns, it must follow that this action cannot be sustained.²²²

On the basis of this reasoning, the court voided the decision of the trial court which had awarded the avails of the lands between the two towns on the basis of their respective 1848 grand lists and remanded the case. One can, perhaps, feel some sympathy for the court when it remarked: "This case has been before the court some length of time, and it is one with which the court have had some difficulty. . . ."²²³

Two years later, the court was again confronted with the same problem, this time as a chancery action. The previous views were adhered to. It was reiterated that the *cestui que trust* was the inhabitants of the town, and the town in its corporate capacity was trustee. It repeated, too, the established position that the legislative control over municipal corporations did not extend to control of property in trust for other than corporate and municipal use:

. . . the beneficial interests and rights of the inhabitants of Montpelier, as it was originally chartered, remain unaffected, and as perfect as if no division had been made . . . but there is no trustee or person in whom is vested the right to collect and receive the avails of that property.²²⁴

220. *Vermont State Papers*, II, 140, 169.

221. 27 Vt. 704, 707-710 (1854).

222. *Ibid.*, p. 712.

223. *Ibid.*, p. 706.

224. 29 Vt. 12, 20-21 (1856).

The solution of the problem was found by an order for the appointment, by the probate court, of a new trustee to administer the trust according to the original charter.

The case of *Victory v. Wells*²²⁵ is peculiar in some respects. Principally, it is one of the rare instances in which the court permitted alienation of public lands—this time by presumption, based on adverse possession. More than this, however, the opinion is involved in its reasoning, and circles about somewhat. One even is led to speculate that the sympathy of the court was with keeping the two old ladies, defendants, in their homes. Another point of interest is that the opinion is unique in making a significant distinction between “grants” and “reservations.” Customarily, the court has had no concern with this point, in respect to the lease lands: various terms—“grant,” “reservation,” “sequestration”—have been used interchangeably.²²⁶ Indeed, it is really upon this distinction that the court’s decision rests.

From one viewpoint, it could be urged that this case is one in which the court was loose-construction minded. In the charter of the Town of Victory, granted by the state in 1781, one share or right was specified “to be and remain for the purpose of settlement of a minister and ministers of the gospel in said township forever,” and this minister’s right, with two others named, were:

“. . . with their improvements, rights, rents [and] profits . . . [to] remain unalienably appropriated for the uses and purposes for which they were assigned; and be under the charge, direction and disposal of the inhabitants of said township forever.”²²⁷

Yet the court managed to reason itself away from this flat term of perpetuity in justifying the presumption of another grant.

In the writer’s view, nevertheless, the case falls within the strict-construction classification, both because of the critical distinction made respecting “grants” and “reservations,” and, more particularly, because the court in its argument essentially relied on the same view as that found in the *Montpelier* cases²²⁸ respecting the trusteeship characteristics of the public grants, plus an emphasis on the use, or purpose, aspect of the particular right involved. The town had not been organized as late as 1842, and so the court held that there could have been no trustee.

225. 39 Vt. 488 (1866).

226. See *Caledonia County Grammar School v. Burt*, 11 Vt. 632 (1839).

227. *Vermont State Papers*, II, 198.

228. 27 Vt. 704 (1854); 29 Vt. 12 (1856).

(Defendants had purchased the lot from a former occupant in 1825.) Moreover, there had never been at any time a settled minister in the town, and so, the court held, the land had never been encumbered, as to the original reservation, by the existence of a *cestui que use*. As to the interest of the inhabitants as *cestui que trust*:

It is also plain, that until a minister should be settled, the inhabitants of the town were to have no beneficial right or interest in the land, nor to derive any resulting benefit from it; and after the settlement of a minister, it was not to be pecuniary in its character, but social and public, as resulting from the religious and moral influence exerted by the gospel ministry in the town.²²⁹

With respect to the presumption of another grant:

As until organized, the town, in the character of trustee, had not any 'charge, direction or disposal' of the minister right, and had no interest in it, except as it constituted an inducement for the settlement of, and a means of supporting a minister, and as no minister has ever been settled in the town, we think it was competent for the State to assume the control and disposal of such right reserved in the charter, and that the Legislature—the granting power of the State—had full power and right to grant the lot thus reserved to any person or purpose it might deem fit. [It will be seen later that this is rather contrary to the customary attitude respecting the subsequent power of the legislature.] . . . for the lot in question had not been *granted* by the charter, but was *reserved* to a use that has never been executed for the want of a *cestui que use*, and of which, for many years, there was no party in being designated by the charter competent and authorized to hold the estate till such *cestui que use* should have come into existence.²³⁰

The Williams v. North Hero case²³¹ was also action of ejectment, but this time it was a problem of two ministers being involved. The case, as was said, is regarded as one of those in which the court was loose in its treatment of charter provisions. From the record in *Shepard's Vermont Citations*, it has not been used by the court since then, and rightly so in the opinion of the writer. It will be looked at carefully, as it is felt to be a rather poor judicial effort. Since it is not in line with the usual practice of the court in interpreting charters, its characteristics should appear clearly. The important aspect of this case is the decision respecting

229. 39 Vt. 488, 495 (1866).

230. *Ibid.*, pp. 495-497.

231. 46 Vt. 301 (1873). *Supra*, p. 147.

the alienation from the town of the right and the settlement on the minister in fee simple, together with its view respecting participation by the town.

This controversy hinges, mainly, on the closing expression in the provision of the grant, by which this and five other rights are reserved and appropriated to the purposes, named, viz.: 'Which said six rights shall, together with their improvements, rights, rents, profits, dues and interests, remain unalienably appropriated for the uses and purposes for which they are respectively assigned, and be under the charge, direction, and disposal of the inhabitants of said island forever.' . . . In order to determine the meaning and effect to be given to the charter in this respect, it is proper to recur to the ideas, law, and usages, prevalent at the time the charter was granted. There was then [1799] no statute law on the subject in this state.²³²

In the view of the present writer, there are two serious faults with the opinion. The first is that Judge Barrett is seen to have misused by partial quotation, Judge Royce's opinion in *Williams v. Goddard*.²³³

So far as any trust might seem to have been created in the inhabitants of the town, or island, in reference to the right of the first settled minister, it must be held to have been in subordination to the purpose of the appropriation, and to the rights of the person entitled to the land appropriated. In the expression 'and be under the charge, direction, and disposal of the inhabitants of said island forever,' it could not have been intended that the word *forever* should be operative to defeat the personal right of the party in whom, when he should answer the call as being the first settled minister, the grant was to become vested and accomplished in absolute right in fee. And this leads us to refer to and adopt the language of Judge Royce in *Williams v. Goddard*, *supra*: 'There is a diversity in these grants or reservations. In some charters the right is simply reserved for the first settled minister in the town. In others it is reserved for the first settled minister, to be disposed of for that purpose, as the inhabitants of the town shall direct. Thus far the land is evidently destined, upon a legal and sufficient settlement of a minister, to vest absolutely in such minister as private property.' . . . It is proper here to add, that in the charters granted by the state government, there is no uniformity in this respect.²³⁴

Here follows a lengthy description of this condition, and the assump-

232. *Ibid.*, pp. 314-315.

233. 8 Vt. 492 (1836). *Supra*, p. 148.

234. 46 Vt. 301, 318-319 (1873).

tion that this was due to carelessness in administration and a belief that the basic scheme would be the same in all cases. It is unfortunate that Judge Barrett felt impelled to cite and quote Judge Royce, from the opinion in *Williams v. Goddard*, as he did, because the use of the quotation creates a false impression in the mind of the reader of the real views of Judge Royce. Earlier in the latter's opinion, he states: "The whole question must therefore turn on the manner in which this right is granted or reserved in the Town Charter."²³⁵ To continue his words from where Judge Barrett left off, Judge Royce said:

The terms of the charter in this instance are different still. The right in question is 'to be and remain for the purpose of settlement of a minister and ministers of the gospel in said town forever.' And it is provided that this right, as likewise those reserved for the support of common schools, and of social worship, 'together with their improvements, rights, rents, profits, dues and interests, shall remain unalienably appropriated to the uses and purposes for which they are respectively assigned, and to be under the charge, direction, and disposal of the inhabitants of said township forever.' . . . And that this succession [of ministers] was intended is quite evident, from the terms of perpetuity repeatedly applied to the use, from the perpetual charge and control conferred upon the town, and from the restraint of alienation which is stamped upon the property. The terms employed to direct and secure the application of this property to the purposes expressed, are applied with the like view to two other rights; and these were never understood to be temporary reservations, or capable of being diverted from the objects designated. In short, the language of the charter in reference to this right seems to forbid the supposition, that the estate was to become absolute in the minister settled.²³⁶

Judge Barrett's partial quotation and subsequent use of it is doubly unfortunate since the two cases are so closely parallel in circumstances. In each instance a minister was attempting to acquire title in fee to the first settled minister's lot. And in each case the town charter happens to be one of those including the provisos "forever" and "unalienably." The only material distinction is that in the *Goddard* case the right was reserved for a "minister and ministers"; whereas, in the *North Hero* case it simply referred to the first settled minister. But this hardly affects the basic position taken by Judge Royce to the effect that the terms of the charter must govern in each instance, inasmuch as the charters vary

235. 8 Vt. 492, 498 (1836).

236. *Ibid.*, p. 499.

in their wording; or his secondary position that the phrasing as found in these two charters does not intend to separate the treatment of the minister right from that of the other rights embraced in the phrase. Actually, Judge Royce assumed perhaps the most extreme position to be found of literal application of charter terms.²³⁷

The other principal criticism to be made of the opinion has to do with the fact that this case also presented a problem resulting from revision of towns. The original charter, containing the grant at issue, had been for a town of Two Heroes, embracing South Island and North Island. Since, it had been split into the two towns of South Hero and North Hero. Judge Barrett discusses the difficulty of a trust relationship for the town due to this fact and refers to the opinions in the Montpelier cases²³⁸—quite rightly, because there is a parallel in the situation. But he then avoids any recognition of the solution accomplished in that litigation and, in fact, avoids a conclusion by virtue of recognizing the fee in the minister. In the process of his development, moreover, he manages to confuse the distinction which had hitherto been made (and emphasized in the Montpelier cases) between the town as a corporate organization, as trustee, and the inhabitants of the town, as *cestui que trust*.

In the Asbestos Case, the decision, and the central point in the opinion, rested on the point that “there was no expressed restriction [respecting alienation] to the grants to the town and the University.
 . . . ”²³⁹

Attitude Respecting New Hampshire-New York Controversy

While on the subject of charters, in view of the comment quoted from *Corinth v. Newbury*²⁴⁰ respecting the source of land titles, it will

237. In the writer's opinion, the North Hero decision is much more in line with the customary views and practice in Vermont respecting the minister right than is the Goddard decision. It is simply felt that Judge Barrett took a regrettable route by which to justify his decision. There are certain other criticisms to be made of Judge Barrett's work in this case during the review of cases pertaining to the minister right.

238. 27 Vt. 704 (1854); 29 Vt. 12 (1856).

239. 108 Vt. 79, 96 (1936). This is another instance in which the distinction made in *Victory v. Wells*, 39 Vt. 488 (1866), between “grants” and “reservations” shows up as an exceptional viewpoint. Here it was held that since the lands were, before the granting of the charter, under the control and disposition of the General Assembly, the reservation was, in effect, a grant or dedication to public uses.

240. 13 Vt. 496 (1841). *Supra*, p. 149.

be well to look briefly at the record of the Vermont court in its attitude toward the New Hampshire-New York controversy. Here, the court can be considered as hardly less than erratic.

The first cases recorded were *Paine v. Smead*²⁴¹ and *Jacob v. Smead*.²⁴² In these, Nathaniel Chipman took the position that the Order in Council of 1764 constituted a transfer of jurisdiction by the Crown, from the one province to the other, rather than a simple confirmation of jurisdiction in New York. Thus, he validated the Wentworth grants and also New York grants after that date.²⁴³

In *Johnson v. Bayley*²⁴⁴ the court enforced a trust and in effect recognized New York confirmatory grants. *Brown v. Edson* said:

. . . we do know, that this portion of the state [Plymouth] was in those early times claimed by the inhabitants to belong to the State of New Hampshire, and the jurisdiction *de facto* was, for many years, always somewhat *in dubio* between New York and New Hampshire, the jurisdiction *de jure* always belonging to New York probably, but New Hampshire in fact maintaining the actual government. . . .²⁴⁵

In *Townsend v. Downer* the court held invalid the execution and proving of a deed accomplished in New York in 1773.

For the conveyance of land, is to be made according to the law of the place of the land, that is, the *lex rei sitae*. And if there be a conflict of jurisdiction, in that place, the law of the government, *de facto*, exercising the jurisdiction, rather than of the government, *de jure*, is to prevail. . . . Strictly speaking then, we could only look at the law of the province of New Hampshire, and of this state, after it superseded that law. For although the present territory of Vermont did rightfully belong to the province

241. N. Chip. 51 (1791) ; also reported in 1 D. Chip. 56.

242. N. Chip. 95 (1791).

243. It is interesting to note, in this connection, that Nathaniel Chipman played a not well known part in the solution of the New York-Vermont controversy. At a critical period of the situation he and Alexander Hamilton carried on a correspondence and finally met at Albany. At that time, presumably, the plan, finally effectuated, was evolved by which Vermont made the reimbursement of \$30,000 in return for extinction of New York land claims. Following the action of the two legislatures, Chipman was designated one of two commissioners to represent Vermont before Congress in the final successful appeal for admission to the Union. *Special Master, Findings*: 260, 261, pp. 389-391 ; 268-281 incl., pp. 392-404.

244. 15 Vt. 595 (1843).

245. 23 Vt. 435, 447 (1851). This was written by Judge Redfield, one of the more revered jurists of the Vermont court.

of New York, the actual jurisdiction was always maintained by New Hampshire.²⁴⁶

This is a really remarkable statement to have been made in view of the actual history of the time—1773—and even earlier. It would require a powerful stretch of the imagination to conceive of New Hampshire's relation to the area as deserving the description of maintaining actual jurisdiction.

Davis v. Moyles²⁴⁷ referred to original grants made by New York. (The Chipman cases had had to do with New York confirmatory grants of Wentworth grants.) Here the court took the view that the 1764 Order had, in effect, been a transfer of jurisdiction. The court held that the preamble to the Vermont Constitution of 1777 refers only to lands held under original charter from New Hampshire, and does not invalidate the title to lands originally granted by the governor of New York after that government was given jurisdiction by royal decree.

Readsboro v. Woodford could have been an interesting case in point because of the nature of the situation. Defendant questioned the Readsboro charter partly because it had been issued by Colden in 1770, the grant thus occurring after the Order in Council of 1767 suspended authority to make grants in the disputed area. The court side-stepped the whole issue, however, and relied on acquiescence as a basis for validating the town charter: "Nor can the state itself question the legality of a municipal charter after long acquiescence in its validity."²⁴⁸

In order to complete the picture of the inalienability of the lease lands under Vermont doctrine, certain other topics must be examined in the light of Vermont cases.

Adverse Possession

The taking of land by adverse possession is of consequence as a legal problem, as well as a practical matter, in an area which, both historically and geographically, presented opportunity for considerable unorthodox land operating. The court recognized this condition in Caledonia County Grammar School v. Kent:

. . . it is quite within the course of such affairs in this State for men, without right and against right, to take possession of vacant

246. 27 Vt. 119, 123-124 (1854).

247. 76 Vt. 25 (1902).

248. 73 Vt. 376, 378 (1904).

timber lands lying as here in remote and sparsely settled regions not easily accessible, for the very purpose of appropriating them to their own use. . . .²⁴⁹

The legislature took cognizance of the early land turmoil in an ill-advised series of acts respecting quieting of land titles, for which that body was severely censured by the Council of Censors in its first septenary Address to the Freemen.²⁵⁰ The Council of Censors was not insensible to the conditions prevailing; its remarks were vivid respecting the extent of land title difficulties. Its objection was to the cure proposed by the legislative body.

As might be expected, the Vermont *Reports* abound in cases arising from adverse possession of land. Those were read which affected lease lands, together with a sampling of other cases sufficient, it is believed, to establish the general attitude of the court. It can be stated, as a generalization, that the court has not been favorably inclined toward loss of the public lands by adverse possession. No more has the legislature. There are exceptions, of which some notice has already been taken.²⁵¹ As to the court, it will be found that such instances are so few as to constitute distinct deviations from established attitudes. Similarly, legislation in Vermont has protected the lease lands, with one important exception—the period during which the S. P. G. lots were excluded from the benefit of the law. It can safely be asserted that this position is not surprising. It is consistent with the attitude thus far discovered—that the lease lands constitute a grant for a continuing benevolence which can only be assured by the continuance of the beneficial property.

Other than in respect to the public lands, the court has not been excessively severe on those claiming by adverse possession, especially in the earlier years. Again, this is reasonable when one considers the history of the state. The court has been more sympathetic to settlers than to absentee owners. *Tracy v. Atherton* is of especial interest respecting the matter of easements. However, the court in that opinion pretty well summarized its justification respecting adverse possession generally:

And in our judgment, rights to easements acquired by long possession ought to stand on the same ground as rights by possession in lands. The real principle underlying the right is the

249. 84 Vt. 1, 14 (1910).

250. Slade, *State Papers*, pp. 537-539.

251. See *Propagation Society v. Sharon*, 28 Vt. 603 (1856), and *Victory v. Wells*, 39 Vt. 488 (1866).

same precisely on which the statute of limitations stands. In the first place, it is presumed that one man would not quietly submit to have another use and enjoy his property for so great a length of time unless there existed some good reason for his doing so, and that after allowing it for so long, he should not call upon him to show his right or title, when it may not be in his power to do so; and in the second place it is a rule of policy, adopted in support of long and uninterrupted possession.²⁵²

The question of what constitutes possession has occupied the court's attention at times. It does not seem to be a clearly defined position. In *Doolittle v. Linsley* it was said:

It may be proper to notice that although there have been heretofore, some decisions of our courts, giving a construction to the statute calculated to divest the proprietor of his title, where the person claiming had entered without colour of title, and had made no permanent improvements, or enclosures, they have not been supported by the more recent determinations.²⁵³

On the other hand, though, the opinion proceeds to show that many acts, other than fencing, would exhibit intention and possession. And *Sawyer v. Newland* is very liberal in the matter, holding, finally, that: "To constitute a possession, no doubt, there must be an exercise of acts of ownership on the land itself."²⁵⁴ The situation, of course, was a fairly complex one for the court in Vermont. The area was not one in which land use would customarily be only represented by settled farming. Possession of land could well be represented by lumbering, which would leave no permanent improvements; and, in the earlier decades, there was some little interest in mineral possibilities. Here, too, permanent improvements would be rare.

The cases respecting adverse possession seem, at first glance, to exhibit a variety of thought among the judges. A closer study, however, shows a theme running through the record. As a general proposition, it is relatively constant. On the other hand, it is of a nature to produce an apparently heterogeneous end-result. The thread of viewpoint tying the various decisions together is a pronounced emphasis on the proposition that each case must be worked out in close relation to the situation and circumstances. It might be put thus: that even in cases at law, the Vermont court gives the appearance of proceeding on the

252. 36 Vt. 503, 514 (1864).

253. 2 Aik. 155, 160 (1827).

254. 9 Vt. 383, 390 (1837).

assumptions underlying equity. This assertion must be modified to the extent that the court has been conscientious in respect to the requirements and limitations of statutory provisions. But, even here, there has been some room left the judges in interpreting the situation of the parties—it is of the nature of such actions.²⁵⁵ For example, the problem, discussed above, as to acts of possession and intent. To illustrate the latter point, from *Sawyer v. Newland*: “It is to be noticed that, in all these cases, great stress is laid on the claim of title. The same acts and doings might be considered as acts of trespass, or of possession and ownership, according to the claim set up by the person performing them.”²⁵⁶

As was indicated in the quotation from *Tracy v. Atherton*,²⁵⁷ for our purposes at least, easements may be bracketed with adverse possession of land. The court has regularly considered the problems of easements as analogous to those of adverse possession arising under statutes of limitations. The principal distinction to be found in the two lines of cases is that in respect to incorporeal rights, the court is somewhat more severe, both in the proving of the right and in the burden of proof laid on him who would assert the abandonment of an established right. The cases cited below are thought to present, collectively, a sufficient perspective on the topic of adverse claims.²⁵⁸ For those who may wish to investigate it more fully than here, *Townsend v. Downer*²⁵⁹ and *Tracy v. Atherton*²⁶⁰ are recommended as leading cases. Of the cases cited, only those which deal with lease lands are to be analyzed.

University of Vermont v. Joslyn was action of covenant for pay-

255. *Supra*, pp. 145-146.

256. 9 Vt. 383, 391 (1837).

257. 36 Vt. 503, 514 (1864), *supra*, pp. 158-159.

258. *Doolittle v. Linsley*, 2 Aik. 155 (1827); *Robinson v. Douglass*, 2 Aik. 364 (1827); *Sawyer v. Newland*, 9 Vt. 383 (1837); *Edwards v. Roys*, 18 Vt. 473 (1846); *University of Vermont v. Joslyn*, 21 Vt. 52 (1848); *Propagation Society v. Sharon*, 28 Vt. 603 (1856); *Townsend v. Downer*, 32 Vt. 183 (1859); *Perkins, Admr. v. Blood*, 36 Vt. 273 (1863); *Tracy v. Atherton*, 36 Vt. 503 (1864); *White v. Fuller*, 38 Vt. 193 (1865); *Victory v. Wells*, 39 Vt. 488 (1866); *Drouin v. Boston & Maine R. R. Co., et al.*, 74 Vt. 343 (1902); *Sowles v. Minot*, 82 Vt. 344 (1909); *Caledonia County Grammar School v. Kent*, 84 Vt. 1 (1910); *Barber v. Bailey*, 86 Vt. 219 (1912); *Sanborn v. Village of Enosburg Falls*, 87 Vt. 479 (1914); *Davis v. Union Meeting House Society*, 93 Vt. 520 (1920); *Addison County v. Blackmer*, 101 Vt. 384 (1928); *D'Orazio v. Pashby*, 102 Vt. 480 (1930); *Brown v. Derway*, 109 Vt. 37 (1937); *Hopkins the Florist v. Fleming*, 112 Vt. 389 (1942); *Nelson v. Bacon*, 113 Vt. 161 (1943).

259. 32 Vt. 183 (1859).

260. 36 Vt. 503 (1864).

ment of lease-rent.²⁶¹ The defense was that the lessee was unable to avail himself of the leasehold because of a portion of it being held in adverse possession by a third party. On the basis of the view expressed respecting the act of 1839,²⁶² the court held it to be lessee's responsibility to get in: "If the title and possessory right passed, the assignee became possessed in law of the term, and an actual possession is not material."²⁶³ Furthermore, the court held against the lessee as to apportionment of lease-rent; he was responsible immediately in proportion to that amount of the land from which he was not excluded. There is no word in the opinion by which the court spoke on the University land as being protected from adverse possession. This, however, is not of consequence because the case actually was argued largely on procedural questions. In any event, the University was treated favorably by the court.

Propagation Society v. Sharon has been considered earlier.²⁶⁴ For this section of the study, it need only be noted that in this instance a piece of lease land was allowed to be lost as public land, by adverse possession. The ruling depended on the acts of the legislature in which the S. P. G. lands were subjected to this hazard. This is the only case to reach the Supreme Court in which this situation appeared. In fact, the S. P. G. lots, it will be seen later, have figured but very little in the *Vermont Reports*.

It is not known how many other S. P. G. rights were lost to the Diocese in this way. The writer attempted to discover this, as it seemed a good probability that there would have been some losses. This supposition is reasonable because the period in which the S. P. G. lots lacked protection of the law was also a time when the S. P. G. land administration was not of the best. However, it was found that the land records of the Diocese were inadequate to supply the information desired. Certain entries found in the *Documentary History of the Diocese*, particularly records of diocesan conventions, lead one to think that the loss may have been considerable.

261. 21 Vt. 52 (1848). It cannot be asserted certainly that this is a case of the public lands. The University leases others of its holdings. The case is not clear on the point. The University land records are so arranged that it is not always possible to sort out the holdings with which this study deals. The case appears, however, to concern public lands and is included on that basis simply to further the possibility of a more or less complete record.

262. *Supra*, pp. 145-146.

263. 21 Vt. 52, 65 (1848).

264. 28 Vt. 603 (1856). *Supra*, p. 109.

Although there is but the one case in the *Vermont Reports*, this situation, on the basis of the remarks above, is the principal exception to the general rule that the lease lands have been immune to adverse possession. Other instances have involved no more than a single right.

Perkins, Admr. v. Blood had to do with a minister lot in Goshen Gore.²⁶⁵ As such, it is a case to be compared with *Victory v. Wells*,²⁶⁶ since both lots were involved in litigation which turned on periods of time during which the respective areas were unorganized. The *Perkins* case was between two claimants, the claims of which stemmed from the same source, and both of whom argued long prior possession under color of title. Briefly, the land had been entered upon as early as 1815, and there had been subsequent deeds thereof. In 1852, the legislature had provided that the county treasurer should administer minister lots in unorganized areas, giving leases for five year terms, the avails to be for the benefit of schools.²⁶⁷ In 1853, both claimants had applied for such a lease. The county treasurer held hearings and granted to intestate's administrator. (Probably, it was supposed in the court, because plaintiff's line of title had admitted the lot to be for the first settled minister.) The court took a different view of the matter than that expressed in *Victory v. Wells*²⁶⁸:

It was true that the absolute or paramount title to the premises was not vested in the plaintiff's intestate by virtue of any adverse possession by her, or by those under whom she claimed; and that her title by occupancy and possession was subordinate to the title granted by the charter to the first settled minister, and would yield to that title whenever it was asserted. . . .²⁶⁹

White v. Fuller has previously been considered, as respects durable leases.²⁷⁰ It also is to the point in the matter of adverse possession of lease lands. The opinion is clear on the issue:

The right of the town and the grammar school in the public lands of that town could not be affected by any statute of limitations, and the length of adverse occupancy and enjoyment which would make a perfect title against any private right could give no title to these lands against the rightful original proprietors.²⁷¹

265. 36 Vt. 273 (1863).

266. 39 Vt. 488 (1866).

267. *Laws of Vermont, 1852-1854*, 1852, p. 63.

268. 39 Vt. 488 (1866).

269. 36 Vt. 273, 285 (1863).

270. 38 Vt. 193 (1865). *Supra*, pp. 109-110.

271. *Ibid.*, p. 203.

The act of 1807 respecting conveyances when third party is in adverse possession was also ineffective in the case :

The application of the statute to any particular case is to be ascertained by taking into consideration its declared object or purpose and the course and tendency of the decisions under it. . . . The statute has never been regarded as applicable to conveyances executed by public agents or officers acting in the line of their official duty ; and we consider these leases as being conveyances of that character.²⁷²

In the first Caledonia County Grammar School v. Kent case²⁷³ the court, among various issues, spoke respecting adverse possession. It was held that where, long before any of plaintiff's rights in the land for grammar school uses had been barred by limitation, laws were passed, which remained in force, declaring that the statute of limitations should not extend to lands given or appropriated to a public use, plaintiff could not lose title to the lands in controversy by limitations.

Finally, as late as 1937, in Brown v. Derway,²⁷⁴ the court reaffirmed this position.

While it is clear that the court has adhered constantly to the protection of the lease lands from such source of alienation, it should be distinguished that this position varies materially from that developed in respect to durable leases and conveyances in fee of the lands. Here, the court has explicitly relied on the statutory provisions exempting the public lands. There has been none of the sort of sociological justification found in the earlier topics—local conditions and circumstances, customs, purposes of the grants, etc.

Prescription

As a corollary to the matter of adverse possession, it is necessary to look at those cases dealing with titles by prescription—those instances in which the statutes of limitations do not apply. In fact, considering the protection afforded lease lands in the Vermont statutes of limitations, the doctrine of presumptive grants assumes considerable potential significance. Its actuality, as related to the lease lands, must be determined, if the law of the lease lands is to stand forth fully.

272. *Ibid.*, pp. 203-204.

273. 84 Vt. 1 (1910). *Supra*, pp. 113-114.

274. 109 Vt. 37 (1937).

As with the topics preceding, cases investigated cover litigation beyond lease land actions.²⁷⁵ And, as with the preceding topics, only so much will be analyzed as will indicate the Vermont position and afford a frame of reference in which to place the lease land cases. The leading case on the doctrine of presumption is *Townsend v. Downer*.²⁷⁶ In that opinion, the court made an ample statement of the Vermont position, which has since been much relied on. It was an action of ejectment in which both parties claimed by succession from the same original grantor. The opinion is fairly exhaustive. It distinguishes between presumptions as matter of law and presumptions in fact. It also distinguishes clearly the conditions by which adverse possession may become established, in relation to statutes of limitations, as against presumptive grants outside of such statutes. It then defines the latter situations into three classes: a) that where the claimant is not within the statute; b) that where the subject matter is not included; c) that where exclusion results from the relation of the parties. There appears to be nothing unusual in the Vermont court's position respecting presumption:

In general, these presumptions are bottomed upon the existence of certain facts, which can leave but little doubt upon the mind of the truth of the fact which we are called upon to presume. They frequently, too, derive their force and efficacy from that vigilance with which the law guards ancient possessions, which sooner than they should be disturbed, presumes that they had in contract a rightful commencement . . . deeds and grants of lands may be shown by presumptive evidence . . . where there has been a possession corresponding to the grant, and where auxiliary circumstances exist making it reasonable to believe that such deed or grant has in fact been made, and where the circumstances are not equally consistent with the non-existence of a grant. . . . The question is simply whether the evidence offered tends to prove the existence of the deed. . . . It is the characteristic of circumstantial evidence that while the circumstances taken singly and separately prove little or nothing, all of them

275. *Executors of Hodges v. Parker*, Brayt. 54 (1817); *Stevens v. Griffith*, 3 Vt. 448 (1831); *University of Vermont v. Reynolds*, 3 Vt. 542 (1831); *Hull v. Fuller*, 7 Vt. 100 (1835); *Beecher v. Parmele*, 9 Vt. 352 (1837); *Brown v. Edson*, 23 Vt. 435 (1851); *Spaulding v. Warren*, 25 Vt. 316 (1853); *Clark v. Tabor*, 28 Vt. 222 (1856); *Londonderry v. Andover*, 28 Vt. 416 (1856); *Townsend v. Downer*, 32 Vt. 183 (1859); *White v. Fuller*, 38 Vt. 193 (1865); *Victory v. Wells*, 39 Vt. 488 (1866); *Caledonia County Grammar School v. Kent*, 84 Vt. 1 (1910); *S. C.*, 86 Vt. 151 (1912); *J. H. Silsby & Co. v. Kinsley*, 89 Vt. 263 (1915); *Brown v. Derway*, 109 Vt. 37 (1937); *University of Vermont v. Carter*, 110 Vt. 206 (1939).

276. 32 Vt. 183 (1859). *Supra*, p. 160.

together harmonize and point to a result, which the mind must adopt as necessarily following from the coincidence of all the facts, all so coinciding that they cannot reasonably be accounted for without the result.²⁷⁷

Despite so broad a statement as this, there has not been much loss of lease lands by this route.²⁷⁸ The best known instance—one much cited—is *University of Vermont v. Reynolds*.²⁷⁹ In this case the University lost the right of college land in the Town of Alburgh, and clearly lost it by the doctrine of presumption.²⁸⁰ The court made plain that the lease lands are not subject to loss by adverse possession, being exempted from the statutes of limitations. Indeed, later, this point was used as a justification for finding a presumptive grant. Furthermore as noted earlier,²⁸¹ the court admitted the Vermont doctrine against conveyances in fee of the lease lands, by holding that a grant from the University could not be presumed, and must be found otherwise. However, the situation was exceptional—so much so, that the University's case appears weak on which even to have commenced litigation.

The Town of Alburgh had been granted in 1781 in the usual pattern of Vermont grants, including the reservation of the public rights. But the proprietors under the charter made no division, nor ever successfully asserted their claim. In fact, the whole town was settled and occupied by other persons, none of whom held or claimed under the charter grantees. The University brought ejectment against the defendant, who had been in possession for thirty-eight years, holding adversely. (It is not clear why Reynolds was selected by the University as an object of the suit, rather than any other of the town's occupiers.)

The court held that the judge in the trial court should have directed the jury that it might and ought to presume, in favor of the long-continued possession, an antecedent grant to the inhabitants of the town, or an abandonment and extinguishment of the charter title, or a surrender of that and a subsequent grant to the persons in possession.

Essentially, the court's position was a matter of practical necessity,

277. *Ibid.*, pp. 206, 208-209, 211-212.

278. This is the more significant when it is noted that the illustration used to demonstrate that class of presumptive grants determined by the claimant's being outside the statutes of limitations was a case in which lease land rights were so lost.

279. 3 Vt. 542 (1831).

280. The opinion is such as to warrant the inference that the other four public rights in that town were gone as well.

281. *Supra*, p. 127.

in two respects. The first, and simplest, was that since there had been no division under the charter, no single holding, such as that of Reynolds, could be selected as the college right. Hence, if the University prevailed, it could only secure its prescribed share by taking one-seventieth of each of the holdings in the town, and this would be impracticable both for the University and the inhabitants—such fractions could not be leased to any advantage or profit to the institution.

The second consideration was more involved. Briefly, it became a matter of public policy in quieting possession. The court considered at length the position of the University, in relation to the original charter. The nature of proprietorships was gone into and described as tenancies in common, rather than joint tenancies as would have been true under English law. From that, the court speculated on the relief available to a proprietorial tenant in common where no proper division had been accomplished. It was concluded that an action of ejectment would be the proper way to be let in. (The court did remark on the difficulty of considering the trustees of the public rights as ordinary tenants in common, but made nothing conclusive of it.)

The crux of the decision was in the next step of the reasoning:

. . . one of the consequences of considering these public rights as being held in common with the other lands, ought not to be lost sight of. If the principle is correct which has been adopted in this state . . . that a tenant in common may, in an action of ejectment against a stranger to the title, recover the whole of the estate held in common for the benefit of his co-tenants, and if the public lands are exempt from the operation of the statute of limitations, it will follow as a necessary consequence, that no length of time will protect a person in possession, but he will be liable at any time to be dispossessed by those who are trustees of the public rights of lands where there has been no location, not only of the *shares*, which belong to those rights, but also of the whole.²⁸²

From this, the final step was “that public policy requires that this possession should be quieted.”²⁸³

Brown v. Edson was a boundary line case, involving a line of division. The property on one side was the minister lot which had been leased out by the town for lumbering in 1842. The court, in respect to presumptions, said:

282. 3 Vt. 542, 555 (1831).

283. *Ibid.*, p. 561.

We should always incline to give effect to such ancient proceedings, if possible, upon the ground that the very fact of their having been taken raises some presumption in their favor, that, at the time, they were regarded as valid; and, unless the court can perceive some sure ground, upon which their insufficiency rests, it ought to be presumed, that some law then existed, by which the proceeding was justified, and which has escaped the investigation of the court, through the obscurity which lapse of time always induces.²⁸⁴

Nevertheless, the court concluded:

The fact that Luke Rice and his grantors had deeds on record of the right of Grimes, and were recognized as the proprietors by the other proprietors, is not sufficient. Such cases, in the northern counties in the state occur every term of their county courts, almost; and if this rule of presuming deeds were to obtain, when an ancient deed could not be found, it would change the title of immense tracts of land. . . .²⁸⁵

In *White v. Fuller* the court protected the public rights against adverse possession under the statutes of limitations.²⁸⁶ And it also refused to allow any presumption of relinquishment or abandonment of the rights.

Victory v. Wells has been analyzed rather fully²⁸⁷ but becomes an element of this section because it primarily rested upon presumption. It is significant as being the only other instance (besides the *University of Vermont v. Reynolds* case)²⁸⁸ in which lease lands were lost by presumption. And it is clearly out of line with Vermont jurisprudence as is indicated by its lack of influence. The case is extreme in all respects. For example, the court noticed, but disparaged, the significance of the act of 1852 respecting administration of minister lots in unorganized areas,²⁸⁹ which was influential in *Perkins, Admr. v. Blood*.²⁹⁰ And, in fact, instead of relating the situation to that act, managed a line of reasoning by which it viewed the exceptional nature of the act as helping to justify the decision reached. The court relied on Town-

284. 23 Vt. 435, 446-447 (1851).

285. *Ibid.*, p. 450.

286. 38 Vt. 193 (1865). *Supra*, pp. 162-163.

287. 39 Vt. 488 (1866). *Supra*, pp. 151-152.

288. 3 Vt. 542 (1831).

289. *Laws of Vermont, 1852-1854*, 1852, p. 63.

290. 36 Vt. 273 (1863).

send v. Downer²⁹¹ and Tracy v. Atherton²⁹² as to the doctrine of presumption, although neither of these cases referred to public lands. Finally, in fact, the court actually failed to conform to the Townsend v. Downer thought by saying: “. . . and the jury were fully warranted in finding, that the defendants and their grantors were holding under some valid grant from the State,”²⁹³ although there were some circumstances tending to show that such grant was not made. The opinion also made much of *University of Vermont v. Reynolds*²⁹⁴ despite the fact that the two cases have but one point in common respecting their circumstances. The one parallel is that in both instances there had been an extremely long adverse occupancy during which there had been no proper administration of the public rights and that such adverse occupancy had been, apparently, by parties acting in good faith.

This parallel circumstance loses its significance, however, as a basis for the *Victory v. Wells* decision when one recalls the other instances in which lease land litigation has arisen from similar conditions but in which the court has regularly discarded them as being of insufficient importance to weigh against the interest of the public rights. Indeed, no better illustration can be asked for than the *Caledonia County Grammar School* litigation.²⁹⁵ In the first of the three reports²⁹⁶ the court specifically made reference to *University of Vermont v. Reynolds*,²⁹⁷ in respect to presumptive grants, and distinguished it as having been a situation in which public policy could not otherwise have been protected, due to the peculiar circumstances. And in the second case²⁹⁸ the court added another obstacle to presumptive grants by affirming that one cannot acquire a prescriptive title to lands which he holds under a perpetual lease.

The latest case to be examined again pertains to the *University*.²⁹⁹ It will be recalled that this case was spoken of as one of those in which it is difficult to be certain whether the land was lease land. The record in the opinion has certain elements which tend to indicate that the land

291. 32 Vt. 183 (1859).

292. 36 Vt. 503 (1864).

293. 39 Vt. 488, 496 (1866).

294. 3 Vt. 542 (1831).

295. *Caledonia County Grammar School v. Kent*, 84 Vt. 1 (1910); *S. C.*, 86 Vt. 151 (1912).

296. 84 Vt. 1 (1910).

297. 3 Vt. 542 (1831).

298. 86 Vt. 151 (1912).

299. *University of Vermont v. Carter*, 110 Vt. 206 (1939).

was of the other holdings of the institution. For example, it appeared that the University acquired by quit-claim in 1844. This is not so conclusive as it might seem. The lease lands have been so loosely administered that such items as quit-claims may appear in the record of parcels which are known to be of those granted in the town charters. The case is presented here to complete the record and, more especially, to indicate again the sort of circumstances in which the court may go so far as to find against educational or religious interests.

Following the 1844 quit-claim there was no evidence of conveyance by the University. The lot in issue was a part of defendant's farm, with perfect paper title commencing with mortgage deed in 1871, and possessed by the defendant without permission of plaintiff since 1923. Also in the farm was another lot belonging to the University on which the defendant had regularly paid rent, believing that to be the only portion of the farm so encumbered, or in which the University was interested. On the one hand the town had assessed and collected taxes on the lot in issue since 1870, while on the other hand, the University had never billed defendant or his predecessors in title for rent on it. After all that, the University belatedly brought action of ejectment. (This occurred during the institution's latest flurry of land administration.)

The court held that a grant could be "presumed to the defendants or some of their predecessors in title from the plaintiff provided the latter had power to convey."³⁰⁰ It was determined that such power existed under the provisions of *Laws of Vermont*, 1865, No. 83, sec. 4.³⁰¹

There is another aspect of presumptions which must not be missed. It actually is fraught with more potential influence on lease lands than are direct court actions. These cases are those in which the court indulges in presumptions of acquiescence and the like in order to quiet questions of lot lines, proprietors' divisions and so on. They do not ordinarily bear directly on lease lands, in the litigation, but they are capable of fixing public shares along with other property in the town under consideration by the court. If the location of the public rights parcels were undesirable due to the proprietors' doings; or if, through mistake or otherwise, a lot boundary line encroached on lease land acreage, such a decision would confirm the condition.

300. *Ibid.*, p. 216.

301. This act established the juncture of the University with the State Agricultural College. Section 4 authorized disposition by the new corporation of properties previously held by the two institutions.

The cases cited include a variety of circumstances of presumption and, together, demonstrate the court's attitude. Generally speaking, it can be characterized thus: that the court has been extremely cautious of accepting circumstantial evidence if there appeared to be any possibility of such acceptance perpetuating past illegal or illegitimate actions; but the court has also recognized the necessity of quieting present possessions and titles, at times, where uncertainty exists as a result of the disorderly situation prevailing in the early days. An example of this is the comment in *Hull v. Fuller*:

When the original monuments are found, no testimony can be received to show that the surveyor intended to locate the boundaries elsewhere. Were it otherwise, the boundaries of the whole State might be disturbed. A single error in the allotment of a town might lead to a new allotment throughout; and if ancient boundaries are to be disturbed, upon this principle, there would be no end to the consequences.³⁰²

Acquiescence

The topic of acquiescence having been touched upon, the whole matter may well be dealt with. In addition to those cases cited in the last topic, others were examined.³⁰³ The position is this: lines, even though mistaken, and other such problems, including easements, will be conclusive after 15 years, when coupled with acquiescence. The latter must be asserted by possession in accordance with the situation as claimed, but may be demonstrated by constructive possession. The fullest statement, including a broad review of conditions prevailing and problems to be confronted, was found in *Neill v. Ward*.³⁰⁴ This case also displays other matters of legal interest in Vermont. It included a review of pronouncedly questionable proprietors' activities; a good example of boundary line troubles (in fact, the decision and opinion were evidently designed to put the whole town at rest and avoid the possibility of nu-

302. 7 Vt. 100, 110 (1835).

303. *White v. Everest*, 1 Vt. 181 (1828); *Boothe v. Coventry*, 4 Vt. 295 (1832); *Hull v. Fuller*, 7 Vt. 100 (1835); *Sawyer v. Newland*, 9 Vt. 383 (1837); *Crowell v. Bebee*, 10 Vt. 33 (1837); *Burton v. Lazell, et al.*, 16 Vt. 158 (1844); *Ackley v. Buck*, 18 Vt. 395 (1846); *Child v. Kingsbury*, 46 Vt. 47 (1873); *Davis v. Judge*, 46 Vt. 655 (1874); *Felton v. Cheltis*, 81 Vt. 10 (1908); *Sowles v. Minot*, 82 Vt. 344 (1909); *Barber v. Bailey*, 86 Vt. 219 (1912); *Soulia v. Stratton*, 99 Vt. 304 (1926); *D'Orazio v. Pashby*, 102 Vt. 480 (1930); *Neill v. Ward*, 103 Vt. 117 (1930); *Parrow v. Proulx*, 111 Vt. 274 (1940).

304. 103 Vt. 117 (1930).

merous suits arising) ; trees as monuments, and their lack of permanence ; lack of reliability of either the charter or proprietors' votes on which to estimate the acreage of rights. *Boothe v. Coventry* merits particular notice because in it the court specifically stated that the same rule of acquiescence applies to the location of the public lands, as to the lands of individuals.³⁰⁵ *Sawyer v. Newland* contained a pungent admission by the court of the conditions with which it must contend: "It is scarcely possible to prove a legal division in any of our old towns. Hence, all which has ever been required, is to show a division in fact, and this presupposes that no evidence of a legal division exists."³⁰⁶ *Felton v. Cheltis*³⁰⁷ went to the extent of holding that a failure to assert a right may be evidence of an acquiescence, although it does not, in itself, constitute acquiescence. And in *Sowles v. Minot* it was held that a failure to occupy land, for an indefinite time, does not constitute an abandonment of title or possession.³⁰⁸ An additional point in Vermont land affairs, brought out in *D'Orazio v. Pashby*,³⁰⁹ and other cases, is that description of a lot by reference to its number on the plan of the town is just as definite, though not as particular, as it would be if the lines were given. Such a description, in its legal effect, is according to the lines of the lot as surveyed and established in the original division shown by the recorded plan. In view of early conditions and ways of doing, this leaves the actuality of a given property in anything but a state of certainty.

Proprietors' Doings

Proprietors' doings, and the court's response thereto, form a distinct problem to one who would attempt to know the lease lands of Vermont. Something has been shown, among the last few cases, of the situation. Attention is drawn to the problem, directly, however, so that its significance may not be overlooked. The group of cases cited³¹⁰ will

305. 4 Vt. 295 (1832). The right at issue was one of those under the control of the town. But which one is not clear. The opinion referred to it simply as "one of the public rights."

306. 9 Vt. 383, 391 (1837).

307. 81 Vt. 10 (1908).

308. 82 Vt. 344 (1909). It can be seen that both these last holdings are applicable to the administrative habits of the lease land grantees.

309. 102 Vt. 480 (1930).

310. *Executors of Hodges v. Parker*, Brayt. 54 (1817) ; *Evarts v. Dunton, et al.*, Brayt. 67 (1817) ; *S. C.*, Brayt. 70 (1820) ; *Stevens v. Griffith*, 3 Vt. 448 (1831) ; *Abbott v. Mills*, 3 Vt. 521 (1831) ; *University of Vermont v. Reynolds*, 3

give a sufficient picture of the problem of the judges in reconciling the earlier irregularities with the later necessities. The cases indicate clearly how it is that lease lands could have suffered during the period of institution of the towns; and how the court might well find it expedient, and even essential, in terms of public policy, to confirm such situations. Here, the general necessities of the community would at times override the sympathy of the court for the welfare of the public rights. Enough has been described from these cases, previously, at various points, to give the gist of the matter. It should be recalled, though, at this point, that the influence of proprietorial irregularities would be aggravated in the case of the public rights because they were not represented at proprietors' meetings.

Public Policy

The requirements of public policy have also figured in lease land cases.³¹¹ In some of these it has been stated explicitly, in others by clear implication or by words which were the equivalent of the term. In all of them, except *University of Vermont v. Reynolds*,³¹² public policy was regarded by the court as calling for the protection of the lease lands.

Eminent Domain

Besides those topics already examined, the possibility of loss of lease lands by condemnation under the power of eminent domain is to be considered. Since 1937, the situation is clear. The act which authorized the sale of lease lands also provided that they were subject to this action. Before that date it would seem that such was not the case.

No report could be found from the Vermont Supreme Court of such litigation affecting the lease lands. Consequently, resort was had to eminent domain actions revolving around other situations by which to derive a conclusion respecting the lease lands. A reasonably conservative interpretation of the Vermont law leads one to assume that the lease lands would have been completely immune to encroachment for

Vt. 542 (1831); *Boothe v. Coventry*, 4 Vt. 295 (1832); *Beecher v. Parmele*, 9 Vt. 352 (1837); *Sawyer v. Newland*, 9 Vt. 383 (1837); *Clark v. Tabor*, 28 Vt. 222 (1856); *J. H. Silsby & Co. v. Kinsley*, 89 Vt. 263 (1915); *Neill v. Ward*, 103 Vt. 117 (1930).

311. See *University of Vermont v. Reynolds*, 3 Vt. 542 (1831); *Williams v. Goddard*, 8 Vt. 492 (1836); *Caledonia County Grammar School v. Kent*, 84 Vt. 1 (1910); *University of Vermont v. Ward*, 104 Vt. 239 (1932).

312. 3 Vt. 542 (1831).

purposes which justify the use of the power of eminent domain. One can go farther and assert that this immunity would have been “involuntary”—that the trustees of the lease lands would have been helpless, in the law, to cooperate in condemnation of their lands. This view is taken on the basis of the cases related earlier in which the court has refused to accept any alienation of the lease lands beyond durable leases. (It must be remembered that a transfer of property under condemnation proceedings amounts to a forced sale.)

As to the matter of the suggested complete immunity, the steady Vermont doctrine has been that land cannot be condemned and taken by eminent domain proceedings for a public use when the land is already devoted to another public use, without express or implied legislative authority.³¹³ Such authority never expressly existed until the act of 1937. Advantage of the argument for an implied authority could rarely be taken—the court has held to a strict position, as described in *Vermont Hydro-Electric Corp. v. Dunn*:

The rule generally recognized is that when the only land available for a particular public work specifically authorized by the Legislature is already devoted to a public use, the power to take such land will be inferred, but not otherwise. . . . It is not enough that the property sought to be taken will be a convenience to the party seeking to appropriate it; but the necessity must be actual, must clearly appear, and must arise from the nature of things over which the party desiring to take has no control.³¹⁴

Furthermore:

. . . where the language of the statute conferring the right of eminent domain is general, it is presumed, in the absence of some necessary implication to the contrary, that it was not intended that land already devoted to one public use should be taken for another.³¹⁵

These statements would seem to preclude most efforts to take lease lands in this way. Roads and railroads in Vermont can ordinarily be laid in a variety of surveys. Dams for water storage would be the most

313. *Deerfield River Co. v. Wilmington Power Co.*, 83 Vt. 548 (1910); *Rutland Ry., Light and Power Co. v. Clarendon Power Co.*, 86 Vt. 45 (1912); *Wheeler v. St. Johnsbury*, 87 Vt. 46 (1913); *Sanborn v. Village of Enosburg Falls*, 87 Vt. 479 (1914); *Vermont Hydro-Electric Corp. v. Dunn, et al.*, 95 Vt. 144 (1921); *Middlebury College v. Central Power Corp. of Vermont*, 101 Vt. 325 (1928).

314. 95 Vt. 144, 151-152 (1921).

315. *Ibid.*, p. 153.

obvious case in which no choice of location was available. Yet even this was disallowed in the case just quoted from. The situation was that the City of Rutland wished to acquire water rights, which were the possession of the utility corporation, in order to provide an additional municipal water supply, and this right was denied. The ruling gains added significance when it is related that the power corporation had not yet developed the water rights: "And it is not necessary that the property be actually in use for the public purpose to exempt it from the proceeding."³¹⁶

In view of the passive character of the administration of many of the lease lands, it might be suggested that eminent domain proceedings could occur with the lessee, or tenant, as party defendant. One attempting to take on such a basis would be insecure. The court has held that all parties in interest must be properly notified.

The Middlebury College case is the most nearly analogous of those cited, to the subject of this study. The college had received, by inheritance, a piece of land. The will specified that it was to be kept as a park, with the college as trustee. The power corporation wished to take an area of the park for the development of a power dam. The court refused to allow the diversion of the land. During the course of the opinion the court pointed out the existing broad meaning of "public use" in this connection:

. . . the 'public use' involved in the law of eminent domain is not the 'public use' involved in the law of taxation . . . 'the test whether a use is public or not is whether a public trust is imposed upon the property; whether the public has a legal right to the use, which cannot be gainsaid or denied, or withdrawn at the pleasure of the owner.'³¹⁷

And, " 'An enterprise does not lose the character of a public use because that use may be limited by circumstances to a comparatively small part of the public.' "³¹⁸

Easements are also embraced in this doctrine of exemptions. In *Sanborn v. Village of Enosburg Falls*³¹⁹ it was said that the subjection of land to a highway easement is a taking of property to the same extent as if the absolute title had passed to the municipality. And it was held that any permanent occupation of private property by a municipality for

316. *Ibid.*, p. 149.

317. 101 Vt. 325, 336-337 (1928).

318. *Ibid.*, pp. 336-337.

319. 87 Vt. 479 (1914).

public use, so as to exclude the owner from its beneficial use, must be under the power of eminent domain upon payment of compensation, unless the act can be justified under some other governmental power.

Evidently, Vermonters insist on a flexible treatment of problems so that situations may be handled as needed. In view of the law, as just outlined, the writer has had his curiosity aroused by finding various instances in which railroads and highways cross lease land parcels. He was unable to secure from any of the trustees of the lands concerned any information as to how this was accomplished, from the legal viewpoint. Nor was he able to gain any satisfactory answer from those who had taken the rights-of-way.³²⁰

320. Such complaisance with respect to the law has also been displayed by the legislature. Although it had not provided authorization for encroachment by highways, it recognized and accepted an instance of such encroachment in the following act:

Whereas, the legislature of the State of Vermont, at its annual session in 1848, divided the town of Montpelier into the towns of Montpelier and East Montpelier; and whereas in the division of said town the public rights for the support of the gospel, and for the support of the ministry, and for the support of public schools, amounting to nine hundred and sixty acres, were all left in the town of East Montpelier; and whereas also, the town of Montpelier now draws from said East Montpelier a large proportion of the rents of said lands, which lands are not liable to taxation; and whereas also, there are many miles of highway on said rights now supported by the town of East Montpelier, and also many persons residing on said rights liable to become town paupers; and whereas also, it is not equitable that the town of Montpelier should share in the rents of said lands without sharing, in the same proportion, in the burthens imposed on the town of East Montpelier in relation to the same; *Therefore* . . .

Sec. 1. The town of Montpelier shall pay to the town of East Montpelier their just proportion of maintaining and keeping in repair all highways on said public rights.

Sec. 2. The mode of ascertaining the proportion for the town of Montpelier to pay, shall be as follows: the listers of both towns shall agree on the appraisal of said lands without the buildings, at the same rate the other lands in East Montpelier are appraised, appraising each piece separately and designating the school district in which the same is situated and the same shall be recorded in the town clerk's office in East Montpelier, and the percentage shall be carried out the same as the other lands in town, and when the town of East Montpelier shall vote any tax for the support of highways, the town of Montpelier shall pay to the town of East Montpelier, on or before the first day of July next thereafter, such proportion of the sum such tax would raise on said rights, if subject to taxation, as the proportion of the rents which they receive from said rights bear to the whole rents of the same; And in case the listers of said towns cannot agree on the value of said lands, either town may apply to the county court for the appointment of a committee to appraise the same, which committee shall be appointed on notice given to the other town twelve days before the appointment of said committee.

Sec. 3. The town of Montpelier shall pay to the town of East Mont-

The two activities which will have had the most concern respecting the taking of lease lands are the Vermont State Forest and the National Forest Service, both of which hold large forest acreages in the state. The State Forest solved the matter by simply taking over the lease-hold and becoming the tenant.³²¹ Financially, this has not been disadvantageous from the viewpoint of the Forest Service because the average level of lease rents is much below the average tax rate which would be paid otherwise.³²²

Land was first acquired for the Green Mountain National Forest in 1932.³²³ This program would almost inevitably mean acquisition of lease lands because of the proportion of lease land lots located in the forested mountainous parts of the state. Inquiry was made of Mr. Joseph A. McNamara, United States District Attorney, at Burlington. It appears that that office has undertaken condemnation actions in the federal district court, throughout the period of the forest acquisition. The actions have proceeded under the doctrine of "superior national public use" when authorized by Act of Congress, and the congressional legislation respecting the National Forest Service has been acceptable to the court as a basis.

Actually, the federal program has not been subjected to any question of validity because the federal agencies have met no opposition to their taking, by which the issue of the status of the lease lands has been raised. By far the most of the condemnations have been of S. P. G. rights.³²⁴ The Diocesan authorities have been agreeable and have appar-

pelier the same portion for building all new roads and bridges on said public rights.

Sec. 4. The several sums specified in this act shall be recovered as follows: the treasurer of the town of East Montpelier shall give to the treasurer of the town of Montpelier twenty days notice of the amount aforesaid, and if the town of Montpelier shall not pay the same in said twenty days, the same may be recovered in an action on the case founded on this statute, with full costs in case payment is refused.

Sec. 5. This act shall take effect from its passage.

Laws of Vermont, 1859-1860, 1859, pp. 146, 148.

321. The Governor, in the name of the state, leases for a term of years or otherwise, any such forest lands. *Laws of Vermont, 1917, p. 10.*

322. In order not to destroy the revenue resources of the "hill-towns," the legislature has allowed taxation of the State Forest acreage.

323. No. 1 of the *Laws of Vermont, 1925, p. 3*, authorized the acquisition of such forest lands by the United States "by purchase, gift or condemnation with adequate compensation" but included no express provision applicable to land already devoted to a public use.

324. This would follow from the location, in the south-central section of the state, of the National Forest—the area in which Wentworth's grants extended farther back from the Connecticut River and Lake Champlain margins.

ently considered the prices offered adequate. Mr. McNamara stated that his office was not immediately concerned with the problem of the compensation, but that the actions were brought against both the grantee of the public right and the lessee. The appropriate federal administrative personnel arranged a satisfactory division of the award money between the two defendants.

Police Power

There still remains to be examined the matter of taking of the lease lands under the police power of the state. There are no cases directly in point. The two cases cited³²⁵ were used only to ascertain the Vermont court's position relative to this power. It would appear that the court has erected no peculiar limitations around its use. It has said that the police power of the state extends to all the great public needs, and all property rights are held subject to it; as respects the police power, there is no closed class or category of activities affected with a "public interest." The court has also been explicit that a proper use of the police power is not inhibited by the fourteenth amendment to the United States Constitution. The only limitation found was that the use of the police power must not be a guise under which to effectuate action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Thus, the lease lands clearly have been subject to the operation of this power. No instances of such loss of lease lands were encountered during this research, however.

325. *State v. Auclair*, 110 Vt. 147 (1939); *Sowma v. Parker*, 112 Vt. 241 (1941). Both of these involved the question of taking property.

Chapter V

THE LEASE LANDS AND THE COURT: OTHER JUDICIAL DOCTRINES

EJECTMENT ACTIONS

It was remarked before¹ that the earlier days of Vermont saw much land trouble, and the contents of Nathaniel Chipman's *Reports* were described to illustrate the high proportion of ejectment suits. Actions of ejectment continued for a long while to figure prominently in Vermont court reports. And, of most immediate interest, they have figured prominently in litigation over the lease lands. Having completed examination of the general subject of alienation of the lease lands, a recapitulation of the suits in ejectment is presented in order to focus attention on their significance and to bring forth at one point an appreciation of the treatment accorded the public rights by the courts. Before doing so, the law respecting such actions in Vermont should be explained.

As a move in the program, which has been touched upon from time to time, of simplifying the law pertaining to real property, action of ejectment was simplified. As it stands in Vermont, a single action determines both the question of right to the property and any damages accruing to the plaintiff as a result of a favorable decision. A second action for award of damages is not required. And it is to be borne in mind that the outcome of a suit in ejectment is conclusive as to the title to the property. For a well-stated explanation of the action of ejectment in Vermont, the opinion in *Marvin v. Dennison, et al.* is recommended.²

As with preceding topics, the cases below³ include cases not on lease

1. *Supra*, p. 101.

2. 20 Vt. 663 (1846).

3. *Selectmen of Colchester v. Hill, Brayt. 65 (1815); *Rood v. Willard, Brayt. 65 (1816); *S. C., Brayt. 67 (1817); *Selectmen of Rockingham v. Hunt, Brayt. 66 (1817); *Evarts v. Dunton, *et al.*, Brayt. 67 (1817); *S. C., Brayt. 70 (1820); *Orange County Grammar School v. Dodge, Brayt. 223 (1817); *Pomeroy v. Mills*, 3 Vt. 279 (1830); *S. C.*, 3 Vt. 410 (1831); *University of Vermont v. Reynolds, 3 Vt. 542 (1831); *Boothe v. Coventry, 4 Vt. 295 (1832); *Town of Charleston v. Allen, 6 Vt. 633 (1834); *Maidstone v. Stevens, 7 Vt. 487 (1835);

lands, as well as those which did determine the title to lease lands. Comparison is thus available. Furthermore, some of the non-lease-land cases contain important statements by the court on the subject of ejectment and respecting land titles generally. The list cited is not intended to be a complete compilation of ejectment suits, except for those relating to the lease lands. As to the latter, it is to be observed that this type of action has been well represented. The lease lands have been a fertile source of litigation. It is to be remembered, too, that these cases are only those in which resistance was strong enough to force the issue into the Supreme Court. The writer is informed that various of the trustees of public lands have brought other suits in ejectment in the county courts which were not appealed. An outstanding instance of this is the activity of the S. P. G. in securing various of its rights following the decision favorable to it in the United States Supreme Court. The cases, as they have hitherto been analyzed, show that the public rights to the lease lands have been accorded very favorable treatment in the court.

OBLIGATION OF CONTRACT

The attitude of the Vermont court, and its application of its views, toward three matters of law are to be taken into account in understanding the care with which the judges have treated the lease lands. These are: 1) the impairment of obligation of contract⁴; 2) trusts and respon-

Lord v. Bigelow, 8 Vt. 445 (1836); *Strong v. Garfield, 10 Vt. 497 (1838); *Caledonia County Grammar School v. Burt, 11 Vt. 632 (1839); Beach v. Haynes, 12 Vt. 15 (1840); *Keith v. Day, 15 Vt. 660 (1843); *Pownal v. Myers, 16 Vt. 408 (1844); Edwards v. Roys, 18 Vt. 473 (1846); *Congregational Society, Newport v. Walker, 18 Vt. 600 (1846); Marvin v. Dennison, *et al.*, 20 Vt. 663 (1846); *Brown v. Edson, 23 Vt. 435 (1851); Spaulding v. Warren, 25 Vt. 316 (1853); *Orleans County Grammar School v. Parker, 25 Vt. 696 (1853); Clark v. Tabor, 28 Vt. 222 (1856); Propagation Society v. Sharon, 28 Vt. 603 (1856); Townsend v. Downer, 32 Vt. 183 (1859); *Victory v. Wells, 39 Vt. 488 (1866); *Williams v. North Hero, 46 Vt. 301 (1873); *Currier v. Rosebrooks & Town of Brighton, 48 Vt. 34 (1875); *Jamaica v. Hart, 52 Vt. 549 (1880); *Franklin County Grammar School v. Bailey, 62 Vt. 467 (1889); *Caledonia County Grammar School v. Kent, 84 Vt. 1 (1910); *S. C., 86 Vt. 151 (1912); State v. Thomas J. Heaphy, 88 Vt. 428 (1914); Soulia v. Stratton, 99 Vt. 304 (1926); University of Vermont v. Carter, 110 Vt. 206 (1939). Those cases marked with an asterisk (*) have to do with lease lands.

4. Poultney v. Wells, 1 Aik. 180 (1826); Caledonia County Grammar School v. Burt, 11 Vt. 632 (1839); Starksboro v. Hinesburgh, 13 Vt. 215 (1841); Herrick v. Town of Randolph, 13 Vt. 525 (1841); Orleans County Grammar School v. Parker, 25 Vt. 696 (1853); Montpelier v. East Montpelier, 27 Vt. 704 (1854); S. C., 29 Vt. 12 (1856); Jamaica v. Hart, 52 Vt. 549 (1880); Harris v. Towns-

sibilities arising from them; and 3) the public use of property. These will, accordingly, be examined. In elaboration of the first of them, there is occasion to observe the position taken by the court respecting: limitations on the power of the legislature; activities of other official agencies; and the problems arising from changes of town lines. All of this, it is believed, will contribute to a better comprehension of what has been related and will, likewise, apply to an appreciation of the question of the tax exemption afforded the lease lands.

The judges have been uncompromising in respect to observance of the obligation of contractual rights, and nowhere more so than with the doings of the legislature.

Poultney v. Wells very early established the position respecting requirements for redistribution of the benefits of lease lands. The case arose from a change in the line between the two towns, and the issue was that Poultney demanded a proportionate share of the Wells avails. The perpetual nature of the public grants was recognized, and they were regarded as trusts.⁵ The position was taken, which has since been followed, that the *cestui que trust* is the inhabitants and not the town in its corporate capacity. Thus, no change in the trust can be made without the consent of all parties concerned, and as to the town, this means the inhabitants. So: the legislature can exercise no power over the grant as made in the town charter, or the proceeds thereof, except with such consent. In this case the court embraced the idea of implied consent on the part of Wells since there had been no objection raised to this provision of the act for changing the town line and on this basis held that assumpsit could lie against Wells.

Caledonia County Grammar School v. Burt⁶ likewise developed from a legislative effort to redistribute the benefit of lease lands—this time to another grammar school. The court laid the whole issue in terms of im-

hend, 56 Vt. 716 (1883); Franklin County Grammar School v. Bailey, 62 Vt. 467 (1889); Vermont & Canada R. Co. v. Vermont Central R. Co., 63 Vt. 1 (1890); Stern v. Sawyer, 78 Vt. 5 (1905); North Troy School District v. Troy, 80 Vt. 16 (1907); Barre v. Perry and Scribner, 82 Vt. 301 (1909); Sargent v. Clark, 83 Vt. 523 (1910); Caledonia County Grammar School v. Kent, 84 Vt. 1 (1910); State v. Clement National Bank, 84 Vt. 167 (1911); O'Brien v. Holden, 104 Vt. 338 (1932); Brattleboro Retreat v. Brattleboro, 106 Vt. 228 (1934); Jones v. Vermont Asbestos Corp., *et al.*, 108 Vt. 79 (1936).

5. 1 Aik. 180 (1826). This is of particular interest because the Wells charter was not one which used any of the terms such as "forever" or "inalienably" which figured in some later cases. *N. H. S. P.*, XXVI, III, 533.

6. 11 Vt. 632 (1839).

pairment of the obligation of contract. It was held that the legislature by the grant to the Peacham school had precluded such a move. The Dartmouth College case,⁷ *Fletcher v. Peck*⁸ and *Terrett v. Taylor*⁹ were relied on for authority: "That a grant of land, by a state legislature, vests a title indefeasable by the state, and is a *contract* which the state has no power to impair by subsequent legislation, is fully settled. . . ."¹⁰ And a legislative grant, or a deed, of lands ". . . to an aggregate corporation having perpetual succession, required no words of perpetuity, and was unconditional and as absolute and of the same effect, as a grant to a man and his heirs and assigns forever."¹¹ And for our immediate interest:

All the lands in Vermont, granted by charters from its Governor, under the authority of the legislature, are held by the same tenure, and not greater, nor more inviolable than that by which the plaintiffs hold theirs; and it cannot be considered that our citizens hold their farms at the mere will and pleasure of the legislature.¹²

As to the trustees, the court said that, though the grant might have been made without any conditions whatever, ". . . it would have only the implied condition that the use must ever be applied to the purpose of the grant."¹³

Starksboro v. Hinesburg made clear the effectiveness in Vermont of the English common law principle:

. . . that a statute should have a prospective and not a retrospective effect 'a statute is not to be construed so as to work a destruction of a right previously attached.' Though one legislature may repeal the laws of another, yet the rights which have been acquired under them, while in force, do not thereby cease.¹⁴

*Herrick v. Randolph*¹⁵ will be treated fully at a later point in this chapter as it was the only case found which dealt with the question of

7. 4 Wheaton 518 (1819).

8. 6 Cranch 87 (1810).

9. 9 Cranch 43 (1815).

10. 11 Vt. 632, 641 (1839).

11. *Ibid.*, p. 640.

12. *Ibid.*, p. 641.

13. *Ibid.*, p. 639.

14. 13 Vt. 215, 222 (1841).

15. 13 Vt. 525 (1841).

tax exemption of the lease lands. For the present it may be noticed that it took the position that conditions annexed to a grant, after the grant is complete, are not of the same contractual quality and may subsequently be repealed, even to include exemptions or privileges to the grantee. Conditions annexed to the grant, at the time of granting, are as irrevocable as the grant itself.

Orleans County Grammar School v. Parker,¹⁶ like the case preceding, was an instance in which the court upheld the legislature. There is a difference, however, in that this case related to a reservation of power, in the form of a condition, made in connection with the grant. The reservation, as made, was held adequate to support the redistribution desired by the legislature.

It has been seen that in the two cases between Montpelier and East Montpelier,¹⁷ the court applied the doctrine set up in Poultney v. Wells¹⁸ with the utmost rigor, holding that the terms of the charter of 1781 prevented the act of 1848 from being effective as to a division of the lands, or the avails therefrom, between the two new towns. It could find no evidence that the inhabitants had given their consent. The court adhered to this position, notwithstanding that it created a difficult problem for the judges. Here again the Dartmouth College¹⁹ doctrine was relied on. It was made applicable by the ruling that towns came within it when it was a matter of trusts of property for other purposes than corporate or municipal use.

In the view of the writer, there appears to be a certain inconsistency in the court's work in the Montpelier cases. The opinions considered the situation in which a new town was created from part of an old town, the latter remaining in existence on a curtailed basis. As nearly as can be made out, it appears that the court's view was that the old town would retain the property. This obviously does not fit with the proposition that the interest of the inhabitants, as established in the original charter, must not be redefined.

Jamaica v. Hart²⁰ was explicit that the leases with which this study is concerned are enforceable contracts. In the case of such leases granted by towns, the selectmen, acting in their official capacity, are sufficient agents of the town.

16. 25 Vt. 696 (1853).

17. 27 Vt. 704 (1854) ; 29 Vt. 12 (1856). *Supra*, pp. 149-151.

18. 1 Aik. 180 (1826).

19. 4 Wheaton 518 (1819).

20. 52 Vt. 549 (1880).

Franklin County Grammar School v. Bailey declared No. 258 of the Acts of 1884 unconstitutional on the grounds of violating the Dartmouth College²¹ doctrine. The act had undertaken to appropriate lands to the use of schools in Richford, which lands had pertained to the grammar school. The grant to the latter was held to be an executed grant, or gift, and irrevocable. The only right left in the state was to see that the avails were used as specified, and this would be a judicial, rather than a legislative action. "The foundation of all property rights in real estate depends upon the irrepealability of such grants . . . all the grants of lands in townships to the original proprietors are of this kind."²² If a consideration should be regarded as necessary in an executed contract or grant, such consideration could be found in the relief to the state of the burden of administering the lands.

Stern v. Sawyer²³ was not a matter of lease lands, but contains *dictum* of great consequence for their status. Where land is leased for a term, the lessor cannot, by sale and conveyance of the whole or a part, disturb the lessee in his possession and enjoyment during the term, but can only convey his reversionary interest, and upon such conveyance the rent passes to the purchaser as an incident to the reversion. This is reflected in the limiting provisions of the 1937 legislation authorizing sale of lease lands.

In addition to adhering to what has gone before, the opinion in the first Caledonia County Grammar School v. Kent²⁴ case tied down the grants still further by holding that where a grant of land is made, it will be presumed that the grant was accepted in the absence of dissent.

In conclusion, the force of the doctrine established is reflected in the Asbestos Case.²⁵ There the court was agreeable to the 1935 acts authorizing the sale of the lands in question. But the opinion went to some length to stress that the acts were permissive rather than mandatory, that all parties concerned were agreeable, and finally, that the trust basically was not being disturbed.

For the most part, the problem of preservation of the obligation of contract has so arisen that the attention of the court has been directed toward the legislature. This, in part, is due to the fact that the state has

21. 4 Wheaton 518 (1819).

22. 62 Vt. 467, 475 (1889).

23. 78 Vt. 5 (1905).

24. 84 Vt. 1 (1910).

25. 108 Vt. 79 (1936).

made no effective provision for supervising the administration of the lease lands, whereby the trustees could be brought to book. Fundamentally, however, the situation has been so because the lease lands arose as legislative grants²⁶ and because any material modification of the trusts would normally be initiated in the legislature. It is to be remembered, too, that it was the function of the legislature to dispose of two shares, that for county grammar schools and that for a college; the legislature has also had a principal part to play in respect to those shares controlled in the towns, through such legislation as that establishing the nature of school district organization.

In view of this, it is thought well to present a summary of the relation between the court and the legislature: the views of the former toward the responsibility, the powers and limitations thereon, of the latter. The cases below cover the matter thoroughly.²⁷ It is to be seen that a large portion of them have already been examined, especially under the last preceding topic. But there is usefulness to a direct inspection of the relationship because it is determinative of what could be hoped for in any future effort to modify the lease land system.

Essentially, there is nothing exceptional in the attitude of the Ver-

26. This, perhaps, is not strictly correct as to the grants in the Wentworth towns, inasmuch as grants were then a royal prerogative. Two reasons exist for embracing the Wentworth grants in the assertion: 1) that the colonial governor's council, which was theoretically a participant in the granting, partook of the nature of the legislative function; 2) the ruling in *Bennington v. Park*, 50 Vt. 178 (1877), by which "Wentworth towns" and "Vermont towns" are placed on equal footing in the law.

27. *Orange County Grammar School v. Dodge*, Brayt. 223 (1817); *Poultney v. Wells*, 1 Aik. 180 (1826); *Caledonia County Grammar School v. Burt*, 11 Vt. 632 (1839); *Starksboro v. Hinesburgh*, 13 Vt. 215 (1841); *Corinth v. Newbury*, 13 Vt. 496 (1841); *Herrick v. Randolph*, 13 Vt. 525 (1841); *Orleans County Grammar School v. Parker*, 25 Vt. 696 (1853); *Montpelier v. East Montpelier*, 27 Vt. 704 (1854); *S. C.*, 29 Vt. 12 (1856); *Atkins v. Randolph*, 31 Vt. 226 (1858); *White v. Fuller*, 38 Vt. 193 (1865); *Victory v. Wells*, 39 Vt. 488 (1866); *Bennington v. Park*, 50 Vt. 178 (1877); *Jamaica v. Hart*, 52 Vt. 549 (1880); *Franklin County Grammar School v. Bailey*, 62 Vt. 467 (1889); *Readsboro v. Woodford*, 76 Vt. 376 (1904); *United States v. United States Fidelity and Guaranty Co.*, 80 Vt. 84 (1907); *Barre v. Perry and Scribner*, 82 Vt. 301 (1909); *Sargent v. Clark*, 83 Vt. 523 (1910); *Caledonia County Grammar School v. Kent*, 84 Vt. 1 (1910); *Rutland Ry., Light and Power Co. v. Clarendon Power Co.*, 86 Vt. 45 (1912); *Caledonia County Grammar School v. Kent*, 86 Vt. 151 (1912); *Clark v. City of Burlington*, 101 Vt. 391 (1928); *University of Vermont v. Ward*, 104 Vt. 239 (1932); *O'Brien v. Holden*, 104 Vt. 338 (1932); *Brattleboro Retreat v. Town of Brattleboro*, 106 Vt. 228 (1934); *Jones v. Vermont Asbestos Corp., et al.*, 108 Vt. 79 (1936); *In re Taft's Estate*, 110 Vt. 266 (1939).

mont court. Its position is basically that to be found generally in American courts. The Vermont jurists have accepted, without material qualification, the views put forth in such cases as *Dartmouth College v. Woodward*,²⁸ *Fletcher v. Peck*²⁹ and *Terrett v. Taylor*.³⁰ The Vermont court, it may be added, has been strict, indeed severe, in its insistence on this legal position.

For this study, the significance of the above lies in various details of the legal views applied by the Vermont court. The effect of the general doctrine is apparent, as to the system of lease lands, only when these detailed matters are noted. The very strict, literal reading of charters, combined with the "loose construction" attitude of reading intent into other legislative acts, is important, as is seen from various sections of the preceding chapter. It has resulted in limiting later efforts by the legislature to adjust lease land affairs. This is the more serious because it is only too apparent that the legislature frequently failed to exercise foresight in regard to the possible development of the state; it failed ordinarily to include sufficient reservations by which future legislatures could modify the lease land arrangements. The town charters are a particularly glaring example of this. And the difficulty has been aggravated by the court's refusal to take into account the low level of bill drafting ability in the early days when the charters were being written. Another criticism respecting the court's insistence on literal reading of the town charters as limitations on the legislature lies in the fact that the charters were not actually legislative writing. Whatever the legal theory, the practice, under both Wentworth and Chittenden, was that most town charters were drawn up in the executive offices.

One of the most important actions of the court was the development of the proposition that the lease lands held by the towns were non-governmental trust property. This has been of unlimited effect in reducing the opportunity of later legislatures to modify the grants, or their use. The outstanding example is the inability to cope with the problem as it has arisen from changes of town lines.

It is true that here and there the court is reasonably liberal with the legislature. There have been a very few cases in which this was pronounced.³¹ But they are so rare as to be distinct exceptions. A few other

28. 4 Wheaton 518 (1819).

29. 6 Cranch 87 (1810).

30. 9 Cranch 43 (1815).

31. *E.g.*, *Victory v. Wells*, 39 Vt. 488 (1866); and *Jamaica v. Hart*, 52 Vt. 549 (1880).

cases have held the door open, to some extent, as to legislation. In *Herrick v. Randolph*,³² for example, the court held that only exemptions or conditions which formed a consideration of the grant were protected by the United States constitutional doctrine from later modification. This was said in relation to a claim for perpetual tax exemption. Consequently, it must not be read too broadly because the court appears to have been more liberal with the legislature in respect to tax legislation than as to other matters. The *Asbestos Case*³³ probably gave the legislature the most lee-way. It will be recalled that this opinion was built on the explicit acceptance of the legislature as representing the founder of the trust. This, at least, leaves the way open for legislative modifications of the system, insofar as they are kept voluntary to the trustees. However, as a generalization, it is apparent that there has been, or is, little that can be accomplished by the legislature in bringing about material changes in the lease land system.

Lease land problems arising from the re-location of town lines was remarked above as an outstanding situation in which the law of Vermont has made for difficulties, and it merits particular attention. A group of cases has been selected which indicate the position, both generally, and especially with respect to the lease lands.³⁴ The matter stands as a significant situation because of the early conditions prevailing in the area and the many changes of town lines, which have since been attempted, to rectify poor arrangements.³⁵ The word "attempted" is used because a large share of such acts of the legislature are so written as to depend

32. 13 Vt. 525 (1841).

33. 108 Vt. 79 (1936).

34. *Poultney v. Wells*, 1 Aik. 180 (1826); *Corinth v. Newbury*, 13 Vt. 496 (1841); *Spaulding v. Warren*, 25 Vt. 316 (1853); *Montpelier v. East Montpelier*, 27 Vt. 704 (1854); *S. C.*, 29 Vt. 12 (1856); *White v. Fuller*, 38 Vt. 193 (1865); *Aldrich v. Griffith*, 66 Vt. 390 (1893); *Searsburg v. Woodford*, 76 Vt. 370 (1904); *Readsboro v. Woodford*, 76 Vt. 376 (1904); *Sargent v. Clark*, 83 Vt. 523 (1910); *Churchill v. Capen*, 84 Vt. 104 (1911); *Morgan v. Brighton*, 95 Vt. 506 (1922); *Underhill v. Jericho*, 101 Vt. 41 (1928); *S. C.*, 102 Vt. 367 (1930).

35. *Supra*, pp. 170-171. *Aldrich v. Griffith*, 66 Vt. 390 (1893), is an interesting illustration of the extent to which town lines can become a tangled problem in Vermont. Here, even a boundary committee appointed by the court was unable to agree on the proper location of the line between Wallingford and Mt. Tabor. And in *Underhill v. Jericho*, 102 Vt. 367, 369 (1930), the court admitted its troubles:

But while the statute contemplates that the charter line is the one to be located and established, it is not necessarily absolutely and precisely according to the charter, which might in some cases be quite impracticable and perhaps impossible, but as nearly according to the charter as it reasonably may be.

on town acquiescence for fulfillment. Legally, this has been unnecessary; the court has made it plain, more than once, that the boundaries of a town are at the mercy of the state.³⁶ But, practically and politically, such deference by the legislature has been necessary—it is another reflection of the influence in Vermont government of the towns. It must be remembered that the House of Representatives is composed of town delegates.

This technique of legislation constitutes a definite obstacle to any effort at a complete, detailed study of the lease lands—the sort of study originally contemplated herein. The list of town line acts in the appendix³⁷ is only the first step which would be required to determine what effects may have been had on particular, individual lease lands thereby. It would also be necessary to discover, in all such instances, what subsequent action was taken by the town, or towns, concerned. As the procedure has gone in Vermont, the legislative records do not indicate what finally came of the act.³⁸ In effect, they may be referred to as “enabling acts” by which the towns may complete the process of town line change if they so wish.

The whole matter of town lines in Vermont has been so troublesome that the cases selected include some, the purpose of which is to demonstrate this. Such opinions of the court relate the circumstances clearly, and authoritatively, and show the way in which the judges have had to take notice of such tangled arrangements.

As to the lease lands the cases cited illustrate the way in which the court has fixed the trust *locus* of the lands in terms of original charters. And they illuminate the way in which, coupled with poor administra-

36. *Sargent v. Clark*, 83 Vt. 523 (1910), shows the extent to which the court has adhered to this position. Certain citizens of Pawlet went before the legislature to oppose a proposed partition of the town. *Public Statutes* (1906), sec. 3530, provided that “. . . a town may vote such sums of money as it deems necessary . . . for the prosecution and defense of the common rights and interests of the inhabitants. . . .” The case arose as a result of the plaintiff’s opposition to so reimbursing those who went before the legislature for their expenses. The court disallowed the reimbursement. It held that the “rights and interests” meant in the act are the rights and interests of the inhabitants in their corporate capacity. Hence, a town is not authorized to vote money to pay expenses incurred in opposing such an act of the legislature.

37. See App. B.

38. No. 65 of the acts of 1939 changed this situation and requires that town clerks shall certify within ten days to the Secretary of State the result of the town vote. *Laws of Vermont*, 1939, p. 92.

tion, town line changes may obscure the existence of lease land parcels. They also apply to the doctrine, well expressed in the Asbestos Case,³⁹ that the consent of all concerned is requisite to modification of the trusts. And they describe some of the difficulties into which individuals can be drawn through their connection with the lease lands.

In the opinion of the writer the most important single consideration is the proposition that a change of town lines does not allow of a re-assignment of lease lands, even in cases in which the relocation of the line throws the lots into another town,⁴⁰ nor a redistribution of the avails. This position, of course, depends on the two views: that the lands are a "non-governmental" trust property, and that they are granted to the inhabitants in their social, rather than their corporate, entity. In effect, the lands become a vested right, as expressed in *White v. Fuller*.⁴¹

Something has been said already respecting the relations of towns and town officers to the lease lands.⁴² It is to be recalled that town selectmen are responsible for administration of the largest number of such grants: the share for the town schools, in both Wentworth and Vermont towns; the glebe in the Wentworth towns, since 1805 when this share was confiscated for benefit of schools; the share for the social worship of God (or as it is variously called, the Gospel or the ministry lot) in the Vermont towns; the first settled minister lot in those towns in which there has been no settlement of a minister, in both Wentworth and Vermont towns; and in a few towns, the grammar school share, where that has been appropriated to the use of the public schools. The listers in the towns have a connection with all of the lease lands, as has been described.⁴³ It should be added that the selectmen share this responsibility because they participate in final approval of the grand list. It does not require elaboration to see that the quality of work by these officials will be of influence in the end-result of the grants of public lands in the town charters.

39. 108 Vt. 79 (1936).

40. *E.g.*, the instance of the lands at issue in the Asbestos Case, 108 Vt. 79 (1936), which had fallen within the Town of Eden; also the *Churchill v. Capen*, 84 Vt. 104 (1911), land. There are other instances, besides these. The case, too, of towns which are successors to old towns is difficult as seen in the Montpelier cases, 27 Vt. 704 (1854); 29 Vt. 12 (1856). Another instance of this was in *Morgan v. Brighton*, 95 Vt. 506 (1922), those towns being successors to the early town of Caldersburgh.

41. 38 Vt. 193 (1865).

42. *Supra*, pp. 79-80.

43. *Supra*, pp. 79-80.

The matter of protection of the obligation of contract has been explored, and it was, at that point, noted that the court's activity has chiefly been directed at the legislature. There are a few lease land cases involving the local officials, principally the selectmen in regard to distribution of avails. The influence of the local officials, however, is more significant than these few cases indicate; hence, some non-lease-land cases are presented, the better to define the responsibilities of such officials.⁴⁴ After all, as a matter of practical results, the effects of the tight rein the court holds on the legislature respecting contractual and vested rights will be minimized if no similar check is maintained at the actual administrative point of contact with the lease lands.

Distribution, by the selectmen, of avails of religious lease land first appeared as a problem for the court in *Gardner v. Rogers*.⁴⁵ The land had been for the first settled minister and deeded to the town by the minister (Gardner) to be used for support of the ministry.⁴⁶ In its acceptance of the gift, the town provided for a proportionate division of the avails to the various congregations, excepting the Church of England. The selectmen found that they could not determine on what basis to distribute among the several claiming ministers and prayed for a direction from the court of chancery. The court reviewed the history of distribution of religious benefit money:

This, however, was the manner in which it was usual to direct the division of moneys appropriated for the support of the gospel. [Proportionately to the members or adherents of the various churches.] In the act of the legislature, passed in 1794, appropriating the rents and profits of the Glebe rights for the support of religious worship, they were to be distributed, when there was more than one religious teacher, in proportion to the number of

44. *Congregational Society of Poultney v. Ashley, et al.*, 10 Vt. 241 (1838); **Gardner, et al. v. Rogers, et al.*, 11 Vt. 334 (1839); *Fuller v. Gould*, 20 Vt. 643 (1848); *Stearns v. Miller*, 25 Vt. 20 (1852); *Davis v. Strong*, 31 Vt. 332 (1858); **Universalist Society, Fletcher v. Leach*, 35 Vt. 108 (1862); **Lemington v. Stevens*, 48 Vt. 38 (1875); **Jamaica v. Hart*, 52 Vt. 549 (1880); **Spiritual Atheneum Society of West Randolph v. Selectmen of Randolph*, 58 Vt. 192 (1885); *Ripton v. Brandon*, 80 Vt. 234 (1907); **Holton v. Hassam*, 94 Vt. 324 (1920); *Town of Orange v. City of Barre*, 95 Vt. 267 (1921); *Boyce v. Sumner*, 97 Vt. 473 (1924); **Jones v. Vermont Asbestos Corp., et al.*, 108 Vt. 79 (1936); *Doubleday v. Town of Stockbridge*, 109 Vt. 167 (1937). Those preceded by an asterisk (*) pertain to lease lands.

45. 11 Vt. 334 (1839).

46. This was the same *Gardner*, and the same land, which figured later in *Pownal v. Myers*, 16 Vt. 408 (1844), *supra*, pp. 128-129.

rateable polls belonging to the respective congregations resident in the town. The rents of the ministerial lands, by another act passed in 1798, were to be applied to the use of the several settled ministers, in proportion to the number of their *several congregations*. By an act passed in 1818, the rents of the same lands were appropriated to the use of the religious society or societies in such towns, *in proportion to the number of which said society consists* it must be to some society or association where there is a minister officiating, and it must be contributed to the support of the gospel. . . . It does not follow that everyone, who is or who claims to be a preacher, is entitled to receive any proportion of the money unless he is preaching to some society, either purely voluntary, or formed agreeably to the directions of the statute.⁴⁷

This did not settle the problem, however. Universalist Society, Fletcher v. Leach presented the additional question of determination of the actual membership of the various churches, for purposes of distribution of avails. The Society complained that they had been mistreated because the selectmen had eliminated six names from the roster submitted by the Society. The Society depended on its church orders which permitted withdrawal of membership only by written request and payment of all arrearages. The selectmen were upheld by the court in a way which is of considerable importance for all of such classes of lease lands. It was held that the legislation did not prescribe, or intimate, the criterion by which to determine the number of members of the respective societies entitled to participate in the fund. The court declined, either under statutory or common law authority, to accept the church's records as conclusive. Hence, it was held that this function of the selectmen is "judicial" in nature and that they were not responsible for any error of judgment in ascertaining the facts, while acting in good faith and with reasonable diligence. A clear distinction was made in the duty of the selectmen: "It is clear that after the number of the members has been determined, the further duty of the selectmen is essentially ministerial."⁴⁸

In Spiritual Atheneum Society of West Randolph v. Selectmen of Randolph the problem again appeared.⁴⁹ The selectmen were again upheld by the court, albeit indirectly. The Society had been refused a due share of the avails on the ground that it was not a proper religious society in the contemplation of *Revised Laws* (1880), sec. 2707, and peti-

47. 11 Vt. 334, 337 (1839).

48. 35 Vt. 108, 114 (1862).

49. 58 Vt. 192 (1885).

tioned for a mandamus to require of the selectmen a proportionate share of the avails. The court refused to consider the nature of the Society and simply dismissed the petition on the ground that the money was already distributed and, hence, out of the control of the selectmen. This, of course, had the effect of fortifying the discretionary nature of the selectmen's activity.

These few cases are all. But it is to be observed that the selectmen fared well. One might presume that the ministerial part of their responsibility had been handled well, but this does not altogether fit with what was discovered, informally, during the research for this study.

Selectmen have figured, as well, in suits in respect to their responsibilities for the making of leases. *Lemington v. Stevens* is such a case and does not redound to the record of the selectmen. This was the case seen earlier in which all the town rights were conveyed in one lease.⁵⁰ The lease was granted and signed by two of the three selectmen. It contained a covenant that before cutting of any timber full and ample security should be given for damage to lots occasioned by such cutting. The defendant had offered, before entering, to pay into the town treasury \$550 forever, the interest thereof to pay said annual rent. Both this, and a subsequent tender of rent were refused. The land was wild and uncleared and of no value to the lessee except for taking the timber, which he proceeded to do ; whereupon, the town sued.

The town's complaint was on four counts: 1) for recovery of the value of stumpage under the covenant; 2) that the lease was void because it should have had concurrence of all three selectmen; 3) that the selectmen had attempted to lease the lot in question (the minister lot) for a longer period than the law allowed; and 4) that the lease was void for want of acknowledgment because such acknowledgment had not occurred until after those selectmen had left office. The town lost on all counts: on the first because there were no net proceeds to collect; the second was disregarded and not commented on by the court; on the third because the *habendum* covered the requirements of *General Statutes* (1863), Chapter 27, sec. 3⁵¹; and as to the fourth, the court held that *General Statutes*, Chapter 65, secs. 1 and 11, covered the situation. The essential significance of the opinion, in the writer's view, is that despite a peculiar train of events, the selectmen, or a part of them, were upheld

50. 48 Vt. 38 (1875). *Supra*, p. 110.

51. *Supra*, p. 110.

by the court. It regarded the selectmen as adequate and proper agents of the town in the making of the lease, which view has been upheld in the later cases of *Jamaica v. Hart*,⁵² *Holton v. Hassam*⁵³ and the *Asbestos Case*.⁵⁴

The *Holton v. Hassam* case related the record of leases from the selectmen, and a poor record it was. The matter was not directly in issue in the case, but it is only too apparent that in the matter both of records of leases made and in respect to collections of rent the selectmen were not in good position. The *Asbestos Case* carried the recognition of the selectmen far enough to find them sufficient, without the consent of the inhabitants of the town, for conveying the land in fee, under the provisions of the 1935 act in issue.

So much for the selectmen. The record is brief and part of it not good. It is very evident, from any contact with lease land affairs that the very brevity of the record is significant of the failure of judicial control of the local officials in respect to lease land problems.

No cases on lease lands were found involving the listers, although as has been related earlier in this study, the writer encountered situations in which the listers' activities were not as they should have been. Other cases had to be used to give a picture of the legal aspect of the listers' work. The central point to be discovered is that, as with the selectmen, the court has found the listers' duty to include an important element of discretion, coupled with certain ministerial responsibilities.

Congregational Society of Poultney v. Ashley, et al., was a complaint that the church trust fund had been improperly taxed.⁵⁵ In the opinion, the court took the strongest view in favor of exemption of eleemosynary institutions, including a broad interpretation of the intent expressed in the state constitution. (It is somewhat at variance in this position with the court's attitude in *Herrick v. Randolph*.)⁵⁶ The court made it plain that the act of 1825 forbade the listers from laying an assessment against such property, and the opinion dwelt at length on the importance to such institutions of land as an asset.

Fuller v. Gould made an expression of the nature of listers' duties which is vague enough:

52. 52 Vt. 549 (1880).

53. 94 Vt. 324 (1920).

54. 108 Vt. 79 (1936).

55. 10 Vt. 241 (1838).

56. 13 Vt. 525 (1841).

Listers, though not judicial officers, and though the duties required of them in many respects are ministerial, still in others . . . act upon their best discretion and judgment; and when they have jurisdiction of the person and subject matter, they are not responsible for any illegality, or error of judgment into which they may have fallen.⁵⁷

This sounds well and good until it is recalled how little success the Commissioner of Taxes has had in requiring data on tax exempt property.

In *Stearns v. Miller* the court undertook to describe specific responsibility of the listers, though the tone of the opinion seems to manifest some reluctance to go far on that road. The case was a complaint that the listers had set too much acreage against the plaintiff. The court said:

Now the amount of the appraisal, is undoubtedly a matter of judgment and discretion, and for the exercise of which the party is not to be made liable, except for express, or implied malice. . . . But we are not prepared to say, that setting the number of acres of land appraised . . . is anything more, ordinarily, than matter of fact.⁵⁸

Boyce v. Sumner was a complaint of a charitable bequest, an old ladies' home, having been taxed. In this instance, the court was outspoken and firm:

It is urged by the defendant that the action of the listers in making the assessment was judicial and final, and that their judgment as to the amount of property, unappealed from, was conclusive. The principle here invoked has no application when, as in this instance, the property assessed was not taxable under the law, and consequently was outside the listers' jurisdiction. Their assessment of property not within their jurisdiction was without warrant of law, was void and may be impeached by the plaintiffs, 'in any way and at any time, for it is no judgment in law.'⁵⁹

Perhaps the most significant point, for the purposes of a study of the lease lands, is that the listers were capable of viewing their work as they did, both in the field and in the courtroom.

The importance of the listers' work was expressed in *Ripton v. Brandon*,⁶⁰ a pauper case, in which it was stated that the quadrennial ap-

57. 20 Vt. 643, 649-650 (1848).

58. 25 Vt. 20, 25 (1852).

59. 97 Vt. 473, 482 (1924).

60. 80 Vt. 234 (1907).

praisal of the taxable real estate in a town, duly executed, verified, and filed according to law, is a public document, and therefore admissible in evidence on the question of the value of such real estate.

Earlier in the study it was asserted that one of the hazards affecting the status of the lease lands was the law regulating assessment of real property.⁶¹ This point is brought forth in *Orange v. Barre*⁶² and in *Doubleday v. Stockbridge*,⁶³ the latter containing a full exposition of the matter, including a résumé of the history of pertinent legislation. The situation is that in Vermont, except for a short time in the 1880's, the legislation has provided that the assessment on real property shall be set *either* to the owner *or* to the possessor. It is the opinion of the writer that this is of the utmost consequence in the history of the lease lands. It is by this provision that listers are in a position to lose sight of the sequestered nature of lease lots, by the simple device of setting an assessment of them against the lessee, or assignee of the lessee—whoever may happen to be in possession. In view of the conditions which were described at some length, among which is the tendency of occupants of lease land to lose sight of the nature of the holding, it is not surprising to find such tenants accepting a tax bill on the land. In fact, the *Doubleday* case⁶⁴ concerned a situation of land which had been leased by the town for 999 years (not public lands, as of this study) and which had passed through various conveyances.

The record presented is not very satisfying or conclusive. It is thought that this is representative of the true situation prevailing in respect to the operations of the local officers, as related to the lease lands, so far as any judicial control over them has existed. It will be recalled that the legislative Commission on Forest Taxation reported similar views, as respects the listers.⁶⁵

TRUSTS

A group of cases has been selected which, between them, represent the principal holdings of the Vermont court respecting trusts, as they relate to this study.⁶⁶ For the most part, it has all appeared, at various

61. *Supra*, p. 118.

62. 95 Vt. 267 (1921).

63. 109 Vt. 167 (1937).

64. *Ibid.*

65. *Supra*, p. 79, n. 40.

66. *Pownal v. Myers*, 16 Vt. 408 (1844); *Montpelier v. East Montpelier*, 27 Vt. 704 (1854); *S. C.*, 29 Vt. 12 (1856); *White v. Fuller*, 38 Vt. 193 (1865);

points during the preceding analysis and thus constitutes a recapitulation.

It would seem that the central view of the court, as a controlling influence on the lease land system is the doctrine that the grants of land, in the town charters, constitute a trust, and that this trust is perpetual and irrevocable. Among other cases, this position has been expressed in strong fashion in the three Caledonia County Grammar School cases,⁶⁷ the Ward Case⁶⁸ and the Asbestos Case.⁶⁹ *O'Brien v. Holden*,⁷⁰ while not involving lease lands, makes the point, in its holding respecting trusts generally, that trusts are to be so regarded unless the granting instrument clearly contains terms of reservation to another effect. This position has made for the continuance of the lease land system; even the Asbestos Case opinion and the 1937 legislation accept the proposition. It has led to the limitations we have observed respecting any power of modification by the legislature, and it has likewise served as a limitation on the various trustees.

The conditions, thus established, are enhanced by the reasonable definition by the court of the grants as constituting *public* trusts. The basis, of course, is that expressed in the Asbestos opinion and found, too, in *In re Downer's Estate*.⁷¹ The essential point taken is that the public nature of the benefit, and of the trust, results from the indefiniteness of the beneficiaries.

The court's proclivity for emphasizing the intention of the parties is applied to the interpretation of trusts, as seen in the Caledonia⁷² and Ward⁷³ cases, respecting lease lands, and in *Gilkey v. Shepard*⁷⁴ and

Gilkey v. Shepard, 51 Vt. 546 (1879); *Town of Barre v. School District*, 67 Vt. 108 (1894); *Capen's Admr. v. Sheldon*, 78 Vt. 39 (1905); *North Troy School District v. Troy*, 80 Vt. 16 (1907); *Sargent v. Clark*, 83 Vt. 523 (1910); *Caledonia County Grammar School v. Kent*, 84 Vt. 1 (1910); *S. C.*, 86 Vt. 151 (1912); *Powers and Peck, Admr. for Judevine v. Caledonia County Grammar School*, 93 Vt. 220 (1919); *Davis v. Union Meeting House Society*, 93 Vt. 520 (1920); *In re Downer's Estate*, 101 Vt. 167 (1928); *University of Vermont v. Ward*, 104 Vt. 239 (1932); *O'Brien v. Holden*, 104 Vt. 338 (1932); *Jones v. Vermont Asbestos Corp., et al.*, 108 Vt. 79 (1936).

67. 84 Vt. 1 (1910); 86 Vt. 151 (1912); 93 Vt. 220 (1919).

68. 104 Vt. 239 (1932).

69. 108 Vt. 79 (1936).

70. 104 Vt. 338 (1932).

71. 101 Vt. 167 (1928).

72. 84 Vt. 1 (1910); 86 Vt. 151 (1912); 93 Vt. 220 (1919).

73. 104 Vt. 239 (1932).

74. 51 Vt. 546 (1879).

O'Brien v. Holden,⁷⁵ which dealt with other classes of trusts. The point is important because the court has utilized the technique, with few exceptions, to maintain the stability of the lease land system; that is, to contribute to its inflexibility. The exceptions are clearly just that. Pownal v. Myers⁷⁶ is the most notable, and it has been seen that the opinion is radically out-of-line with Vermont doctrine. The Asbestos opinion⁷⁷ may be regarded as the other principal exception in that it admitted of modification of the *corpus* of the trust, with important reservations or limitations. O'Brien v. Holden, speaking of trusts generally, admits of the same possibility.⁷⁸ The relative inflexibility of these trusts, involving land grants, is brought into perspective by a comparison with Town of Barre v. School District⁷⁹ and North Troy School District v. Troy.⁸⁰ These cases concerned redistribution of trusts consisting of money funds, occasioned by certain changes in school district organization. No difficulty, such as has accompanied such changes respecting lease lands, was encountered by the court in adjusting the trust funds to the new circumstances.

Those public shares pertaining to the towns have drawn important rulings from the court, of much influence in the history of the land system. The solution of relationships, by which the municipal corporation is regarded as trustee and the inhabitants of the town as *cestui que trust*, has been a steady influence and is found to be well stated in the Montpelier cases⁸¹ and in the Asbestos Case.⁸² Capen v. Sheldon⁸³ makes the same point with respect to the first settled minister's lot: that the legal title is in the town in its corporate capacity, determinable upon the settlement of a minister. The relationship was badly confused in the Pownal v. Myers opinion.⁸⁴ Indeed, the opinion went so far as to equate the inhabitants and the voters, which, of course, is obviously wrong, at

75. 104 Vt. 338 (1932).

76. 16 Vt. 408 (1844).

77. 108 Vt. 79 (1936).

78. 104 Vt. 338 (1932). Although lease lands were lost as public rights in University of Vermont v. Reynolds, 3 Vt. 542 (1831); Propagation Society v. Sharon, 28 Vt. 603 (1856); and Victory v. Wells, 39 Vt. 488 (1866), only the last could possibly qualify as an exception of this sort.

79. 67 Vt. 108 (1894).

80. 80 Vt. 16 (1907).

81. 27 Vt. 704 (1854); 29 Vt. 12 (1856).

82. 108 Vt. 79 (1936).

83. 78 Vt. 39 (1905).

84. 16 Vt. 408 (1844).

least in respect to a benefit such as religion or education. *Davis v. Union Meeting House Society*⁸⁵ does something of the same trick respecting the inherited trust there being considered. And, while the first explicit statement is to be found no earlier than in the *Asbestos Case*,⁸⁶ the court has steadily adhered to the idea more lately expressed in Judge Moulton's assertion respecting trusts for religious purposes—that, in Vermont at least, municipal corporations are capable of being trustee. The point must not be minimized because it has had so little attention. Another ruling would have made a profound difference in an important portion of the lease lands.

Accompanying the position described in the preceding paragraph is the holding that these town trusts are for non-governmental purposes and, consequently, that the lease lands constitute non-corporate property; that they, in effect, are vested rights. By this position, the court has very largely prevented the legislature from exercising any control over the lease lands. The *Montpelier cases*,⁸⁷ *White v. Fuller*,⁸⁸ and *Sargent v. Clark*⁸⁹ contain good expressions of this, and the *Asbestos opinion*⁹⁰ accepts it and demonstrates some of the implications arising therefrom.

It is worth noticing that, while the court has emphatically insisted on the trust character of the public lands, there has been nothing whatever said at any time respecting supervision of the trust. In certain cases, such as those in which attempted conveyances were voided, and most urgently in the *Caledonia cases*,⁹¹ the court has spoken respecting the requirement that the trustees administer the lands for the benefit of the purpose of the grants. There have been instances in which the court has said that the legislature had the continuing authority to see that this occurred. But in each such instance the statement was negative in context; it was said in the course of remarks denying to the legislature any power beyond this. The judges have been anything but diffident in expressing their views in lease land opinions, but nowhere does one find the court suggesting that it might be well to provide a supervision and

85. 93 Vt. 520 (1920).

86. 108 Vt. 79 (1936).

87. 27 Vt. 704 (1854); 29 Vt. 12 (1856).

88. 38 Vt. 193 (1865).

89. 83 Vt. 523 (1910).

90. 108 Vt. 79 (1936).

91. 84 Vt. 1 (1910); 86 Vt. 151 (1912); 93 Vt. 220 (1919).

accounting procedure equivalent to that performed by the probate court in the case of private trusts.

PUBLIC USE

The language applied in some of the charters, and the language early applied in governmental practice, including judicial practice, to the lease lands was that they were lands "devoted to public, pious and charitable use." It has been obvious that this concept has been determinant in the law expressed by the Vermont court in respect to those matters which have thus far been explored. The ruling as to perpetual leases of the public lands, for one, is clearly dependent on the concept. The next topic, tax exemption, is similarly related. Hence, it is of consequence to examine the ideas of the Vermont court respecting "public use."⁹² Something of this has already appeared during the course of the analysis of the problem of condemnation by eminent domain proceedings.⁹³ In the Middlebury College case the point was made that ". . . the 'public use' involved in the law of eminent domain is not the 'public use' involved in the law of taxation. . . ."⁹⁴ Thus, it is necessary to perceive in just what way the court has viewed the lease lands. Tax exemption is a particularly critical topic, and those cases in which "public use" appears as a tax problem are most usefully developed in the next topic.

Two issues exist in which the Vermont court has not been clear nor steady in its position. One is on the question of whether municipalities

92. *Pomeroy v. Mills*, 3 Vt. 279 (1830); *Abbott v. Mills*, 3 Vt. 521 (1831); *University of Vermont v. Reynolds*, 3 Vt. 542 (1831); *Burr v. Smith*, 7 Vt. 241 (1835); *Beach v. Haynes*, 12 Vt. 15 (1840); *Montpelier v. East Montpelier*, 27 Vt. 704 (1854); *Victory v. Wells*, 39 Vt. 488 (1866); *Drouin v. Boston and Maine R. R. Co., et al.*, 74 Vt. 343 (1902); *Stiles, Collector of Taxes v. Newport*, 76 Vt. 154 (1904); *Swanton v. Highgate*, 81 Vt. 152 (1908); *Deerfield River Co. v. Wilmington Power Co.*, 83 Vt. 548 (1910); *Grand Lodge of Masons F. & A. M. v. City of Burlington*, 84 Vt. 202 (1911); *S. C.*, 104 Vt. 515 (1932); *Rutland Ry., Light and Power Co. v. Clarendon Power Co.*, 86 Vt. 45 (1912); *Caledonia County Grammar School v. Kent*, 86 Vt. 151 (1912); *Johnson v. Jones*, 86 Vt. 167 (1912); *Scott v. St. Johnsbury Academy*, 86 Vt. 172 (1912); *Powers and Peck, Admr. for Judevine v. Caledonia County Grammar School*, 93 Vt. 220 (1919); *Vermont Hydro-Electric Corp. v. Dunn, et al.*, 95 Vt. 144 (1921); *Gore v. Blanchard*, 96 Vt. 234 (1922); *St. Albans Hospital v. Town of Enosburg*, 96 Vt. 389 (1923); *Boyce v. Sumner*, 97 Vt. 473 (1924); *In re Downer's Estate*, 101 Vt. 167 (1928); *Middlebury College v. Central Power Corp. of Vermont*, 101 Vt. 325 (1928); *Brattleboro Retreat v. Town of Brattleboro*, 106 Vt. 228 (1934); *Jones v. Vermont Asbestos Corp., et al.*, 108 Vt. 79 (1936).

93. *Supra*, pp. 172-175.

94. 101 Vt. 325, 336 (1928).

hold the fee of public lands; the other has been a question of the extent to which the terms "public use" and "public charity" carry distinct and separate implications.

In *Pomeroy v. Mills* it was held that "the words *for the use of the public*, show that the intention was to give a mere easement."⁹⁵ This had to do with land in Burlington set aside by the proprietors for use as a public square and part of which was later leased by the selectmen. And in *Abbott v. Mills*⁹⁶ the court said explicitly that the public are not a body capable of taking the fee either by deed or otherwise. In *University of Vermont v. Reynolds*, the doctrine was applied to lease lands. The court stated, in the first place, that the exemption in the statute of limitations for lands granted, sequestered or appropriated to public, pious, or charitable uses, applies to lands reserved or granted in a town charter for the use of a seminary or college. Then it went on, later, to say: "As to these rights of land ["the rights of land which are usually denominated public rights"] and particularly that one which the plaintiffs claim, it is the *use* which is appropriated, and not the freehold."⁹⁷ More recently, in *Gore v. Blanchard*, the general position was again adhered to: "Inasmuch as the public cannot take by grant, prescription, which presupposes a grant, in its strict sense, seems to have no application to highways."⁹⁸ On the other hand, in *Beach v. Haynes*, the court said: "But the court think, for the ordinary town purposes, such as sites for town houses, and public commons, towns may be allowed to take the fee of lands. . . .",⁹⁹ and the opinion in *Gore v. Blanchard* proceeded to admit: "Nevertheless, there are cases in which the doctrine of prescription has been applied to highways. . . ."¹⁰⁰ In the *Beach v. Haynes* opinion¹⁰¹ the court attempted to resolve its difficulty by distinguishing between grants "to the town" and grants "to the public," the latter being thought to be too abstract to take the fee.

The problem has been dealt with in various of the lease land cases, as in the Montpelier cases,¹⁰² *Victory v. Wells*,¹⁰³ and the Asbestos

95. 3 Vt. 279, 280 (1830).

96. 3 Vt. 521 (1831).

97. 3 Vt. 542, 554 (1831).

98. 96 Vt. 234, 241 (1922).

99. 12 Vt. 15, 21 (1840).

100. 96 Vt. 234, 241 (1922).

101. 12 Vt. 15 (1840).

102. 27 Vt. 704 (1854); 29 Vt. 12 (1856).

103. 39 Vt. 488 (1866).

Case,¹⁰⁴ by considering the “town” as holding the legal title as trustee, with the “public” (or as the term has gone, the “inhabitants”) standing as *cestui que trust*. However, at least for practical purposes, the court has essentially treated the lease lands as belonging to the respective grantees of them. This has been expressed, too, in such statements, by the court, as that the lands constitute an irrevocable grant or gift, and that the grants were executed contracts.

In the second of the two open questions the court has treated the lease lands as falling generally within the phrase “public, pious, and charitable.” It should be seen simply as another instance in which the court has been less technical minded about the lease lands than about some other types of dedicated property. The matter can be stated in this way: that “public charitable use” is embraced within the broader general term of “public use.” The distinction has practical consequences in such matters as taxation.

As to “public use,” various of the cases cited show it to include railroad service, and electric and other utility service, whether operated privately or publicly. The term “public charitable use” as developed by the Vermont court, is that which carries the connotations with which the lease lands are colored. The essential ideas are as follows: 1) That the beneficiary includes an indefinite group of people. This group may comprise either a large, or a relatively limited, portion of the total public. 2) As to the lease lands particularly, that the beneficiaries include both present and future generations. 3) That the benefit may be of a variety of forms, social, moral, intellectual, physical. 4) That the relevant portion of the public have an undoubted right to enjoyment of the benefit. This, however, means neither that any individual has an incontestable right, nor that the benefit has to be free of charge. For example, a school may be classified as a public charity but still have the right to refuse admission to individuals not qualified and to charge tuition fees. 5) That there be a legal necessity that the property dedicated to the public use must continue to be so used—that is, that there is a requirement that trustees of such property shall so operate it. This specification, of course, applies as well to property devoted to public uses other than charitable public uses: railroads are not capable of reducing their service on their own initiative.

Quotations from *Boyce v. Sumner*¹⁰⁵ and *In re Downer's Estate*¹⁰⁶

104. 108 Vt. 79 (1936).

105. 97 Vt. 473 (1924).

106. 101 Vt. 167 (1928).

are in point. They contain statements which go far to illustrate the Vermont attitude and the interest in public welfare which is so pronounced in the court's responses in lease land cases. In the first, the court said:

Various definitions have been given of a charitable use or purpose, but perhaps none is better or more applicable than that given by the Supreme Judicial Court of Massachusetts in *Old South Society v. Crocker*, 119 Mass. 1, 20. It is said there: 'To give it [gift] the character of a public charity there must appear to be some benefit to be conferred upon, or duty to be performed towards, either the public at large or some part thereof, or an indefinite class of persons.' . . .¹⁰⁷

In the Downer case these words were written:

In a legal sense, a public charity is defined to be a gift applied consistently with existing laws for the benefit of an indefinite number of persons by bringing their minds and hearts under the influence of education or religion, by relieving their bodies of disease, suffering or restraint, by assisting them to establish themselves in life, or by erecting and maintaining public buildings or works, or otherwise lessening the burdens of government. . . . In its widest sense 'charity' denotes all good affections which men ought to bear towards one another, and in that sense embraces what is generally understood by benevolence, philanthropy and good will.¹⁰⁸

There is great significance, too, in the statement from the court in *Rutland Ry., Light & Power Co. v. Clarendon Power Co.*:

An attempt to give a sufficiently accurate and comprehensive definition of the term 'public use' would be a perilous undertaking. The difficulty, if not impossibility of formulating such a definition is everywhere recognized. . . . A determination of the character of a given enterprise cannot be made upon a consideration of legal principles alone. Economic conditions and the needs of the people must have attention.¹⁰⁹

Burr v. Smith presented the fullest explanation encountered respecting the law of charitable uses and so will be quoted at some length:

I think we shall find, that societies, or bodies of men, unincorporated, have ever been considered, at common law, as capable of receiving gifts or legacies, to be applied to charitable uses; and

107. 97 Vt. 473, 478 (1924).

108. 101 Vt. 167, 172-173 (1928).

109. 86 Vt. 45, 50, 53 (1912).

that it has been the invariable policy of our state, to consider them as capable. . . . In this state, it appears to me, that a decision that a company of individuals are incapable of receiving gifts, for a public or charitable purpose, or that such a society should not be protected in the enjoyment of property given to them . . . would be at variance with all our received ideas since the establishment of the state—at variance with the constitutional provisions made on the subject, and directly at war with the principles of religious freedom. It has always been the practice in this state, and may be considered as their settled policy, to encourage voluntary associations for public, pious and charitable purposes. . . . It has been considered by the community generally, that associations may be formed, money subscribed and collected, property given and received, for the promotion of any cause interesting to the public, and designed to subserve their interests, or for the encouragement or promotion of charity, morality, learning or religion. . . . Every constitution of government which has ever existed since we became a state, have recognized these voluntary associations as deserving of encouragement, and have considered them as standing on the same ground, whether simply united as a voluntary association, or incorporated by an act of the legislature. The 41st section of our constitution provides—. . . . that gifts and grants may be made for purposes of relief to the poor, and for upholding charitable purposes, having in view the moral, intellectual, and religious improvement of the objects which are from necessity general, uncertain and indefinite—[that] communities and associations might be united for the purpose of receiving these donations and distributing them [that] the court are to be liberal in the construction of charitable bequests, to carry into effect the intention of the testator. . . .¹¹⁰

The Judevine opinion is another of the cases in which the court makes reference to this general interest in welfare: “. . . the solicitude of the founders of the State, respecting the education of its youth, as shown by the provisions placed in the organic law concerning the same. . . .”¹¹¹

The upshot of all this is an extremely indefinite and ill-defined position, but certainly one fully broad enough to accommodate the lease lands. Regardless of other aspects of the court's pronouncements, one point stands forth clearly. That is that the judiciary shares in the community interest in charitable endeavor.

110. 7 Vt. 241, 278-281, 306-307 (1835).

111. 93 Vt. 220, 227 (1919).

TAX EXEMPTION

The analysis of the work of the Vermont court opened with what is regarded as the central doctrine by which to account for the continuance of the lease land system—the law of durable leases. It is to be closed by examination of the principal effect of the system: tax exemption—a topic of equal consequence with the matter of durable leases, and, as will be shown, one now having considerable reciprocal influence. It is the tax exempt status, as much as anything, which makes the lease lands a subject of importance in the state and appears, since 1937, to contribute to their continuance.

This matter of tax exemption, like that of the exemption from the statutes of limitations, has been primarily a legislative affair. The court has functioned only negatively, leaving the question alone—an even more passive role than that played respecting adverse possession. In a century and a half, but two cases were found in which the tax exemption of the lease lands was even mentioned! The subject may also be inferred, though, from the Asbestos Case opinion¹¹² in which it was said that after a conveyance in fee simple the lands would no longer be public. Hence, it is to be presumed that they would be taxable.

Herrick v. Randolph¹¹³ is the only case reported in which the issue was a matter of tax exemption of lease lands. No other case even admitted its consideration, and the court has avoided any *dictum* on the question. The only assumption available is that the exempt status of the lease lands is so thoroughly accepted throughout the state that even those who complain about it do not regard it as a reasonable possibility for a trial at law.¹¹⁴

112. 108 Vt. 79 (1936).

113. 13 Vt. 525 (1841).

114. This assumption is substantiated by two items from the experience of this research. The first is that the writer was informed by *everyone* with whom he talked around the state capitol that the lease lands were not taxable. When he inquired as to the basis for this, he was told vaguely that it was from the early state constitutional provisions, or that that was simply the nature of the lease lands, being public rights. There was, in effect, an unquestioning acceptance of an immutable "fact." The other corroborative item is found from acquaintance with the ways of land agents. When they discover lands properly belonging to their principals, which have been bearing a tax, they informally negotiate with the town officers and secure a reimbursement of some portion of such taxes as have been collected, in lieu of lease rent which has not been collected. This is a remarkable transaction, when it is considered thoughtfully. There is no logical basis for it. If there is to be a refund of wrongfully collected taxes, it should logically go to

This situation becomes the more remarkable when one observes the various cases before the court in which tax exemption of other “public, pious, and charitable” property has been made an issue and reviews a variety of other tax litigation.¹¹⁵ Vermonters have not displayed the same complacency respecting other properties—including properties actively and obviously utilized in welfare enterprises.

Herrick v. Randolph arose over the assessment of taxes on the improvements (buildings, etc.) on land which was lease land, pertaining to the “support of the ministry” group of lands.¹¹⁶ The plaintiff claimed a right of perpetual exemption from real property taxes. He based his claim on the general listing law in force at the time the charter of Randolph was granted and the original lease was executed by the selectmen. This act exempted from taxation all lands in the state sequestered to public, pious and charitable uses. The court ruled against Herrick and found him liable for the taxes assessed. The opinion is significant because its view established what became the settled practice and was expressed in legislation: that although the lease lands are tax exempt, betterments thereon are subject to taxation. The general remarks in the case, respecting taxation in relation to the obligation of contract, are

the tenant who had paid such taxes. Certainly, the town has no real responsibility to the trustees of the lands respecting a failure of the trustee in not having administered its lands.

115. *Congregational Society of Poultney v. Ashley, et al.*, 10 Vt. 241 (1838); *Morgan v. Cree*, 46 Vt. 773 (1874); *Willard v. Pike*, 59 Vt. 202 (1886); *Colton and More v. City of Montpelier*, 71 Vt. 413 (1899); *Stiles, Collector of Taxes v. Newport*, 76 Vt. 154 (1904); *In re Hickok's Estate*, 78 Vt. 259 (1904); *United States v. United States Fidelity and Guaranty Co.*, 80 Vt. 84 (1907); *Swanton v. Highgate*, 81 Vt. 152 (1908); *State v. Clement National Bank*, 84 Vt. 167 (1911); *Grand Lodge of Masons F. & A. M. v. City of Burlington*, 84 Vt. 202 (1911); *S. C.*, 104 Vt. 515 (1932); *Rutland Ry., Light and Power Co. v. Clarendon Power Co.*, 86 Vt. 45 (1912); *Johnson v. Jones*, 86 Vt. 167 (1912); *Scott v. St. Johnsbury Academy*, 86 Vt. 172 (1912); *Town of Orange v. City of Barre*, 95 Vt. 267 (1921); *St. Albans Hospital v. Town of Enosburg*, 96 Vt. 389 (1923); *Boyce v. Sumner*, 97 Vt. 473 (1924); *Village of Hardwick v. Town of Wolcott*, 98 Vt. 343 (1925); *Town of Sheldon v. Sheldon Poor House Association*, 100 Vt. 122 (1927); *In re Downer's Estate*, 101 Vt. 167 (1928); *Clark v. City of Burlington*, 101 Vt. 391 (1928); *Town of Brandon v. Harvey*, 105 Vt. 435 (1933); *Brattleboro Retreat v. Town of Brattleboro*, 106 Vt. 228 (1934); *Jones v. Vermont Asbestos Corp., et al.*, 108 Vt. 79 (1936); *Doubleday v. Town of Stockbridge*, 109 Vt. 167 (1937); *Spaulding v. City of Rutland*, 110 Vt. 186 (1939); *In re Taft's Estate*, 110 Vt. 266 (1939); *First National Bank of Boston v. Harvey*, 111 Vt. 281 (1940).

116. 13 Vt. 525 (1841). The assessment was made under the provisions of an act of 1825 authorizing taxes on the betterments on lease lands. *Laws of Vermont, 1822-1826, 1825*, pp. 11-12.

important in considering future possibilities relative to the lease land system. Finally, the opinion, it is believed, deserves some criticism as having been faulty in some of its reasoning.¹¹⁷

It will be recalled that this case was discussed during the examination of the problems of obligation of contract and the powers of the legislature. There the remarks in the opinion were utilized to show how the court felt about the effect of legislative provisions in force at the time of a grant, contrasted with those which might be written after a grant was completed.¹¹⁸

The court opened its review of the situation with a point of great consequence and one which has had little attention in the state:

In the present case there was not, in the terms of the charter of the town of Randolph, any express exemption of this right of land from taxation. There was no act of the legislature, connected with the granting of the charter, which contained any declaration to that effect. Had this been the case, it would have been of the same effect as if that condition had been contained in the charter of the town.¹¹⁹

The point is so significant because this was true with respect to every one of the charters with the single exception of the charter of Wheelock.

The opinion continues:

But, in the present case, it is not claimed that any such condition was, in express terms, annexed to the grant. . . . Neither was there any constitutional, or other general provision of the law, then in force, whereby all lands granted by the state, or by individuals, to pious and charitable uses, were declared perpetually exempt from taxation.^[120] The only statute, or law, in force

117. In the writer's opinion, the conclusions reached by the court are sound, from the viewpoint of public policy, and, in fact, might well have been extended to include the land. It is believed that if that had been accomplished, the lease lands would have constituted a far healthier public institution. The writer's quarrel with the opinion is the way in which the conclusions were supported.

118. *Supra*, pp. 182-183.

119. 13 Vt. 525, 530-531 (1841).

120. In *Journal of the General Assembly, October 1784 and June 1785*, June 17, 1785, p. 4, a bill entitled "An act prohibiting the taxing public lands," sent to the Assembly by the Council, passed the Assembly and was sent back to the Council for concurrence. Although on June 7, 1785, the Governor and Council had resolve to appoint a committee to meet with a House committee ". . . to prepare a Bill for the exemption of all Lands within this State sequestered to public and pious uses, as well private Donations as public Grants, from all kinds of Taxation whatever. . . ." no evidence has been found that the committee was appointed or that the bill from the Assembly was concurred in. *Records of the Governor and Council* (Montpelier, 1875), III, p. 67.

at the time this charter was granted, which is relied upon by the plaintiff, was the general listing law, which provided that ministers of the gospel and the president of the college 'shall have all their property, lying in the same town where they dwell, exempt: As also shall all lands in the state sequestered to public, pious and charitable uses, be exempted.' This enactment is contained in a proviso to the general listing act, which was in force both at the time the charter of Randolph was granted, and when the land in question was leased by the selectmen of that town. Now, it is vain to say that this is equivalent to a general declaration by the legislature that all such lands should be *forever* exempt from taxation. If there had been such a law in force at the time of the charter, I admit its provisions would have formed conditions of the grant, and the state could not have repealed such conditions, or been allowed to violate them. But any attempt to raise such an inference from such premises must signally fail. . . . And the fact that this property, at the time the charter of Randolph was granted, was exempt from taxation, argues no more in favor of a perpetual exemption, than the fact that wilderness land has always been exempt from taxation at the time it was granted by the state, will justify the inference that such lands, by the terms of the grant, were never to be taxed until improved. . . . In all the cases cited from the *Connecticut Reports*, the exemption of the property from taxation is based upon the act of 1702, which, in terms, declares that all such lands, &., as *have been* or *shall be* given, &., shall be exempt from taxes. Here the exemption is a condition of the gift. And with great propriety did that court hold the exemption to be beyond the control of the legislature, so far as lands granted, while that statute was in force, were concerned. . . . It only remains to consider the effect of the act of 1814, which, in effect, provides that all lands granted to public, pious and charitable uses, shall be forever exempt from taxation. It is at once obvious that lands granted by the state for these uses, while that statute was in force, would take that exemption, as one of the conditions of the grant, as was held in the Connecticut cases. But that statute could have no effect upon former grants, except while it continued in force.¹²¹

It is the writer's view that the opinion, as quoted, is weak in some respects. Too much reliance is placed on the fact that the tax exemption in the legislation prior to the 1814 law is contained as a "proviso" in a listers' law. It is notorious that in those early days the legislators were not well trained at bill drafting, and acts of legislation were apt to contain even relatively unrelated subjects; it was also a fairly common practice that rather important legislative provisions would appear as

121. 13 Vt. 525, 531-532 (1841).

secondary provisions in acts, almost as though they were afterthoughts.

It is also to be noticed that from the earliest legislation such lands had normally been provided with tax exemption, starting with 1779, which is the earliest extant publication of statutes.¹²² Furthermore, such exemption is to be found in legislative provisions other than the listers' laws: in 1797 an act was passed requiring the selectmen to certify the quantity of public rights to abate the one cent land tax thereon.¹²³ And it is to be found in the records of the State Treasurer, respecting this one cent land tax, that such abatement did in fact take place up until 1814.¹²⁴ The numerous land taxes laid for financing public roads exempted the public lands,¹²⁵ and the same thing was true in the special tax acts such as those providing revenue for paying off the \$30,000 reimbursement to the New York land grantees and for waging the war.¹²⁶ Another tax exemption provision is to be found in an act of 1779 exempting from proprietors' taxes four public shares.¹²⁷ (This should, without doubt, be taken to refer to the "Wentworth towns" since no "Vermont towns" had yet been granted and the "Vermont towns" when granted reserved five rather than four such shares.) Another important consideration which the court overlooked is that there had been *no* general tax law passed, *of any kind or respecting any lands*, until the act of 1814, and this first such act did include such exemption. Theretofore the so-called listers' laws had served the purpose of filling in gaps left between the various particular tax acts.

So, it is felt that, at the very best, the reverse analogy with the Connecticut act of 1702 is very questionable. It is most apparent that in *every* instance in which the legislature had touched upon taxation as respects the lease lands, exemption had been granted until the act of 1825, and it would seem to be the best interpretation that such exemption had been the continuous intent of the legislature. Certain of the remarks by plaintiff's counsel are considered to be much to the point:

122. Slade, *State Papers*, pp. 297-298, February Session, 1779. *Infra*, pp. 240-242, for description of exceptions and their significance.

123. *Laws of the State of Vermont, Revised* (1797), App., pp. 71-79.

124. See "Ledger of a Tax of One Cents on the acre of Land granted October 1797" in a bound volume labelled VII, 9739, and a bound book, untitled, being the account of State Treasurer Swan for 1800-1816; both volumes are located in the basement vault of the Secretary of State's office in Montpelier.

125. See *Laws of Vermont* from 1786 on and *Records of the Governor and Council*, vol. III.

126. *Laws of the State of Vermont, Revised* (1797), App., pp. 28-32, April 14, 1781. *Laws of Vermont*, 1793, pp. 7-10, October Session.

127. *Laws of Vermont* (1808 comp.), II, No. 1, 302.

The acts which contain the exemption, are in the nature of a contract between the government and the proprietors of Randolph, and those who should take leases of the public lands, that they should be free from taxes. Upon the faith of these laws, it is fair to presume that most of the leases have been taken, and improvements made; for it is well known that individuals, generally, prefer to purchase lands to which they can obtain a title in fee, rather than lands burdened with an annual rent, and granted only for a term of years. . . . To overcome this objection, in some measure, and to hold out some inducement to individuals to take leases of the public lands, the acts exempting them from taxation were probably passed.¹²⁸

One is drawn to the supposition that the decision of the court, as in *University of Vermont v. Reynolds*,¹²⁹ was in terms of public policy, but that in this instance, the court failed to make that fact clear.

Inasmuch as this case is the single opinion in which the Vermont court ruled on tax exemption of the lease lands, its position has been revealed at length. It would seem that the opinion leaves open the possibility of taxation of the land itself, as well as the betterments thereon.

The attitude of the court toward exemption in the *Herrick v. Randolph* opinion¹³⁰ is in striking contrast to the attitude found just three years earlier in *Congregational Society of Poultney v. Ashley, et al.*¹³¹ Here the court considered at length the merits of eleemosynary institutions and the consequent justification of a tax exemption. The court took occasion, even, to call attention to the exemption allowed the public lands and regarded this favorably. Another interesting contrast is that the court here referred to the 1825 act as being just another listing law. We have seen that in *Herrick v. Randolph* a distinction was drawn between this and earlier "listing laws." The Poultney case drew attention to the fact that the 1825 act had said: "lands sequestered *and improved*."¹³² The *Herrick* opinion had admitted that a tax on improvements could conceivably be so high as to nullify the usefulness of the public lands.

In *Morgan v. Cree*¹³³ the court's discussion of tax exemption in *Wheelock* accepted the same view as had been expressed by plaintiff's counsel in *Herrick v. Randolph*¹³⁴: "The exemption of the lands from

128. 13 Vt. 525, 526 (1841).

129. 3 Vt. 542 (1831).

130. 13 Vt. 525 (1841).

131. 10 Vt. 241 (1838).

132. *Ibid. Laws of Vermont, 1822-1826, 1825*, pp. 11-12.

133. 46 Vt. 773 (1874).

134. 13 Vt. 525 (1841).

state taxes would tend to induce people to take leases under the grantees in the charter. . . ."¹³⁵

Boyce v. Sumner gives definitions of a "tax" which serve the purposes of this study. By quotations from other opinions the court explained:

'Taxes are defined as being the enforced proportional contribution of persons and property levied by the authority of the State for the support of government and for all public needs.' And . . . 'It is a general term applied to whatever is required by the government or local authority thereon to be paid by the people. It presupposes that the burden is imposed by some authority other than that of the individual taxed, else, it would not be a tax, but a voluntary contribution' . . . burdens imposed by legislative authority in the exercise of the taxing power.¹³⁶

This matter of legislative authority has been made clear and firm by the court in all respects but one—the question of retrospective legislation.¹³⁷ In *State v. Clement National Bank* the court asserted:

Speaking generally, all within the jurisdiction of the State, is held subject to its right to impose new taxes, or to increase the rate or change the method of taxation. All contracts are made with reference to the taxing power of the State, and in subordination to it.¹³⁸

And in *Clark v. City of Burlington*,¹³⁹ quoting from *Rutland R. R. v. Central Vermont R. R.*:¹⁴⁰

The whole power of taxation under our system of government is lodged in the Legislature subject only to constitutional limitations. What subject-matter, and the method of assessment and collection of taxes are solely questions for the Legislature to determine.¹⁴¹

More particularly, the court has been equally firm in upholding the

135. 46 Vt. 773, 789 (1874).

136. 97 Vt. 473, 479-480 (1924).

137. Various aspects of this are treated in the following cases: *Colton and More v. City of Montpelier*, 71 Vt. 413 (1899); *In re Hickok's Estate*, 78 Vt. 259 (1904); *State v. Clement National Bank*, 84 Vt. 167 (1911); *Village of Hardwick v. Town of Wolcott*, 98 Vt. 343 (1925); *Clark v. City of Burlington*, 101 Vt. 391 (1928).

138. 84 Vt. 167, 190 (1911).

139. 101 Vt. 391 (1928).

140. 63 Vt. 1 (1890).

141. 101 Vt. 391, 401 (1928).

authority of the legislature to make exemptions and to classify property for tax purposes. *Colton and More v. City of Montpelier* contains one of the clearest statements :

The power to tax includes the power to exempt, unless specially prohibited by the constitution. The right is supposed to be exercised on reasons of state policy, and presumptively such exemptions contribute to the general public benefit. . . . The general right to make exemptions is involved in the right to apportion taxes, and must be understood to exist in the supreme legislative power, unless expressly forbidden throughout the entire legislative history of this State, the power of the legislature to declare what property should be exempt from taxation, has been recognized and exercised.¹⁴²

And it has been held that the constitution of Vermont does not provide for "equality of taxation," but for "equality in apportioning on the citizens the expenses of government." Hence, the legislature is not restricted to applying any particular form of tax, nor is it prevented from making exemptions nor classifying property.

The tax authority is asserted in a series of cases¹⁴³ as also being applicable to the property of the state, or its subdivisions. As put in *In re Downer's Estate* :

It is true, as claimed, that it is not the policy of the State to subject its own property, nor that of its municipalities which is devoted to a public use, to a general property tax. . . . The power of the State, however, to tax its own property, and that of its municipalities, is universally recognized. It has been recognized and asserted by our own Legislature.¹⁴⁴

The *Hardwick v. Wolcott*¹⁴⁵ opinion went so far as to break down any distinction between "governmental" and "proprietary" property of municipalities, in this respect. This, however, may be considered as extreme ; it drew a vigorous and well presented protest from Judge Taylor in his dissenting opinion.

Retrospective legislation, as was remarked, is not a matter in which

142. 71 Vt. 413, 414-415 (1899).

143. See *Village of Hardwick v. Town of Wolcott*, 98 Vt. 343 (1925) ; *In re Downer's Estate*, 101 Vt. 167 (1928) ; *Clark v. City of Burlington*, 101 Vt. 391 (1928) ; *In re Taft's Estate*, 110 Vt. 266 (1939) ; *First National Bank v. Harvey*, 111 Vt. 281 (1940).

144. 101 Vt. 167, 174-175 (1928). The court referred to *General Laws* (1917), secs. 465, 688 ; and No. 22 of *Laws of Vermont*, 1925, as examples.

145. 93 Vt. 343 (1925).

a reading of the Vermont opinions will give any positive conclusion as to what might be allowable if the legislature should undertake to tax the lease lands. We have seen that the court opened the way for considerable revision of tax legislation, in *Herrick v. Randolph*,¹⁴⁶ so long as provisions for taxation privileges were not in effect at the time of grants. And some of the cases cited respecting the tax authority of the legislature lead to a similar conclusion. On the other hand, *United States v. United States Fidelity and Guaranty Co.*¹⁴⁷ came out very strongly against legislation of this sort. It admits some small loopholes, but not much. *State v. Clement National Bank*¹⁴⁸ was more liberal with the legislature, but a careful reading of *Brattleboro Retreat v. Town of Brattleboro*¹⁴⁹ again leads to doubts. The last case stressed the matter of a status, which has been accepted and acted upon by the corporation, as being inviolable.

Finally, in respect to legislation, the court has held pretty steadily to the position that provisions authorizing, or alleged to authorize, a tax exemption are to be strictly construed against the grantee of such tax privilege.¹⁵⁰ The statute must be clear, positive and unequivocal. Any slightest doubt is to be construed in favor of a tax liability and against an exemption.

Nevertheless, the court has recognized that the general, established policy of the state has been to authorize tax exemption for the property of institutions devoted to charitable work—that property falling within the phrase “public, pious, and charitable use.” This view has been observed in quotations from some of the opinions analyzed under earlier topics. The point is fully developed in *Congregational Society, Poultney v. Ashley, et al.*,¹⁵¹ *St. Albans Hospital v. Town of Enosburg*,¹⁵² and *In re Downer’s Estate*.¹⁵³ It is to be seen, however, by following the

146. 13 Vt. 525 (1841).

147. 80 Vt. 84 (1907).

148. 84 Vt. 167 (1911).

149. 106 Vt. 228 (1934).

150. Cases in point include *Morgan v. Cree*, 46 Vt. 773 (1874); *Willard v. Pike*, 59 Vt. 202 (1886); *In re Hickok’s Estate*, 78 Vt. 259 (1904); *Town of Sheldon v. Sheldon Poor House Association*, 100 Vt. 122 (1927); *Clark v. City of Burlington*, 101 Vt. 391 (1928); *Grand Lodge of Masons F. & A. M. v. City of Burlington*, 84 Vt. 202 (1911); *S. C.*, 104 Vt. 515 (1932); *Brattleboro Retreat v. Town of Brattleboro*, 106 Vt. 228 (1934); *First National Bank of Boston v. Harvey*, 111 Vt. 281 (1940).

151. 10 Vt. 241 (1838).

152. 96 Vt. 389 (1923).

153. 101 Vt. 167 (1928).

course of tax legislation and court decisions in cases of tax litigation, that the general trend has been a slow, gradual, but steady reduction of the area of property enjoying tax exemption. This is true with respect to all charitable property except the lease lands. The latter have not been affected.

Two principles, in particular, have been of influence in subjecting various charitable properties to taxation. Both of them are to be given attention because they each provide strong contrasts in the attitudes as to the lease lands in contradistinction to other charitable property.

The first of these legal positions is that the determining factor in the eligibility of property for exemption shall be the *use* of that property for a public purpose.¹⁵⁴ In the earlier cases this was sometimes utilized by the court as a device by which to admit property to the privilege of tax exemption. More recently, it has been a means by which to exclude property from the privilege. It is this latter position which is significant herein because it has had some startling influence, although none on the lease lands. The proposition has been carried so far as to mean that the property must be directly in such use. If it is only indirectly applied to the benefit, it is taxable; if, for example, it is rented out and the income is devoted to the charity, a tax will be levied against it. The two cases between the Grand Lodge of Masons and the City of Burlington illustrate the application of the principle.¹⁵⁵

The Masons built a building in the City of Burlington on which they claimed an exemption under authority of *Public Statutes* (1906), sec. 498, which exempted property exclusively used for the support of hospitals and asylums. The basis of this claim was that the Grand Lodge, by formal vote, had determined to appropriate the rental income of the building to paying off the cost of the construction, after which the income would be used for masonic charity, within the scope of the act. The court found against the Grand Lodge. It saw no objection to the nature of the charity contemplated. But it held simply that the money was not then going to charity—and might never do so; before the amortization of the building was completed the Lodge conceivably could rescind its resolution. This was in 1911.

154. See *Willard v. Pike*, 59 Vt. 202 (1886); *Grand Lodge of Masons F. & A. M. v. City of Burlington*, 84 Vt. 202 (1911); *S. C.*, 104 Vt. 515 (1932); *Rutland Ry., Light and Power Co. v. Clarendon Power Co.*, 86 Vt. 45 (1912); *Johnson v. Jones*, 86 Vt. 167 (1912); *Scott v. St. Johnsbury Academy*, 86 Vt. 172 (1912); *St. Albans Hospital v. Town of Enosburg*, 96 Vt. 389 (1923).

155. 84 Vt. 202 (1911); 104 Vt. 515 (1932).

The Lodge again came to the court in 1932 with a renewal of the claim for exemption, this time under *General Laws* (1917), sec. 684, subdivision VI, which provided that real and personal estate granted, sequestered or used for public, pious or charitable purposes should be exempt from taxation. The building had been paid for, and the income from it was now being devoted to the masonic charities. Again, the court held against the Lodge:

. . . it was further pointed out [in the previous case] that by the word 'used' employed in the statute, as applied to real estate, the direct and immediate use of the property itself is meant, and not the remote and consequential benefit derived from its use, and various decisions were cited with approval, holding that where the profits or income of buildings are appropriated to pious or educational purposes, the real estate itself is not used for such purposes.¹⁵⁶

No such rule has been applied or even proposed respecting the lease lands, and yet practically all of them come within specification of the rule.

The second principle mentioned above is that property devoted to public uses will not be exempt when it is located elsewhere than in the town in which the benefit is accomplished. This rule has been applied in the case of property pertaining to municipally operated public utilities; it has also been applied to charitable enterprise.¹⁵⁷ The general underlying principle is that one town should not be burdened for the benefit of a different town. The Sheldon case¹⁵⁸ is presented in illustration because it demonstrates how rigorously the rule can be applied, and it shows the rule in operation against an enterprise which might well have excited the sympathy of the court respecting its laudable purpose. Normally, in Vermont, each town makes its own individual provision for caring for the poor, by establishing a poor farm, or otherwise. The system has not been notable for high quality relief administration; smaller towns, particularly, have neither the resources nor the number of indigents to support relief by which administration can be either economical or enlightened.

Several towns, including Sheldon, decided to pool their poor farm

156. 104 Vt. 515, 518-519 (1932).

157. In point are: *Stiles, Collector of Taxes v. Newport*, 76 Vt. 154 (1904); *Swanton v. Highgate*, 81 Vt. 152 (1908); *St. Albans Hospital v. Town of Enosburg*, 96 Vt. 389 (1923); *Village of Hardwick v. Town of Wolcott*, 98 Vt. 343 (1925); *Town of Sheldon v. Sheldon Poor House Association*, 100 Vt. 122 (1927).

158. 100 Vt. 122 (1927).

operation, and this developed finally into the defendant association. The operation was bequeathed several pieces of property by individuals, at various times, for its purposes. This was the property against which the tax in issue was levied. The cooperative venture commenced in 1846, and, finally, in 1906 the legislature passed an act incorporating it.¹⁵⁹

Another act of 1906 (No. 24), which became part VII, sec. 362 of *Public Statutes* (1906), provided certain general tax exemptions. In this, the first clause included: "Real and personal estate granted, sequestered or used for public, pious or charitable uses"; the last clause ran: ". . . and lands and buildings owned and used by towns for the support of the poor therein, but private buildings in such lands shall be set in the list to the owners thereof, and shall not be exempt." The Association claimed exemption under the first clause. The court held against it, under the last clause.

It was pointed out by the court, in respect to the claim by the Association, that if that view were valid, the legislature would not have included the last clause specifically covering poor farms.

That bill as it was finally passed was in keeping with the long-settled policy of the State concerning the support of the poor and indigent; namely, that each town and city shall bear the burden of supporting its poor. . . . Few laws of the State have received more vigilant attention by our lawmakers than those relating to the support of the poor,^[160] and, so far as we are aware, no attempt has ever been made to charge one town with the burden of supporting the poor of another town, even in the smallest amount, unless such be the effect of the provision under consideration.¹⁶¹

The court considered that the last clause of section 362 turned on the word "therein" and, thus, such lands and buildings could be exempt only when located in the same town as that of the poor being supported. The court refused to consider the incorporating act of the same session, by which the legislature had recognized the joint effort of the several towns, as being in *pari materia*.

It takes no extensive thought on the matter to perceive that this position is a far cry from the treatment accorded the lease lands. Certain groups of them assuredly fall within the scope of this limitation.

159. *Laws of Vermont*, 1906, pp. 729-730.

160. It might be added that these same laws have fostered a fantastic amount of litigation. The *Vermont Reports* abound in cases between towns concerning their respective responsibilities for the poor.

161. 100 Vt. 122, 129 (1927).

The grammar school lands are perhaps the most in point since the development of the high school system in the state. As the situation now prevails in some counties, the secondary school in some one town derives income from lands located in other towns (which other towns may well be supporting their own secondary schools); and, furthermore, those other towns are deprived of tax revenue from such lands. The same may be said for both the University and S. P. G. rights since each of these rights covers approximately a half of the towns in the state. Yet, there is no suggestion that the principle should apply to these lease lands.

CASES BEFORE THE UNITED STATES SUPREME COURT

Thus, the Vermont court in relation to the lease land system. Before turning to the legislature, the contacts made with the lease lands by the United States Supreme Court should be observed. Three cases have brought the lands to the attention of the federal judges.¹⁶² All of them came relatively early, and all of them were a result of the effort by Vermont to dispossess the Episcopalians of the lands granted in the Wentworth charters for the benefit of the activities of the Church of England.¹⁶³

The first, *Pawlet v. Clark*,¹⁶⁴ concerned the right which was reserved in the charter "for a glebe for the Church of England." The legislature passed an act in 1805 entitled, "An act directing the appropriation of the lands in this state, heretofore granted by the government of Great Britain to the Church of England as by law established."¹⁶⁵ Action consequent upon this legislation resulted in the litigation.

The act asserted that such grants were in the nature of public reservations, and as such became vested by the Revolution in the sovereignty of the state. It proceeded to grant the land to the several towns and made it the duty of the selectmen to sue for and recover them and to lease them according to their best judgment and discretion, and appropriated the avails to the use of the schools in the town.

162. *Town of Pawlet v. Daniel Clark and Others*, 9 Cranch 292 (1815); *Society for the Propagation of the Gospel v. New Haven and Wheeler*, 8 Wheaton 464 (1823); *Society for the Propagation of the Gospel v. Town of Pawlet and Ozias Clarke*, 4 Peters 480 (1830).

163. An interesting sidelight is that all three cases were certified to the Supreme Court by the United States Circuit Court, the judges in the latter, in each instance, being divided in opinion.

164. 9 Cranch 292 (1815).

165. *Laws of Vermont, 1805-1807*, 1805, pp. 127-129.

A society of Episcopalians in Pawlet had contracted, in 1802, with the Reverend Bethuel Chittenden of Shelburne to function in Pawlet and to receive the avails of the glebe land. Chittenden leased to Clark and others. He died in 1809 and was succeeded by one Brownson who received the rents until 1811; then the society regularly settled the Reverend Stephen Jewett, who took the rents. The litigation was a suit in ejectment to recover the lots.

The opinion was delivered by Judge Story and was long and detailed in its treatment of the problems before the court. He settled quickly the question of jurisdiction, raised by Daniel Webster, who had argued that there was not a sufficient basis for federal action.

In a general way, Story assumed that the Vermont area had been in the New Hampshire jurisdiction and been separated therefrom. But the essential point was that Vermont had not existed in 1761, at the time of the Pawlet grant, and New Hampshire clearly was unrelated in 1805, at the time of the Vermont grant of the glebe to the town. Hence, the action came within the provision allowing for federal jurisdiction of conflicting claims based on grants from different states.

The legal nature of the grant of the glebe in the town charter, and the status of the grant in relation to the grantee, Story said, "was difficult."¹⁶⁶ In his effort to resolve it, he made an exhaustive survey of the English law relative to the Church of England. Briefly, he found that such a grant is in abeyance for want of a grantee until there is a duly settled parson, who becomes a corporation sole, capable of taking in succession. The grant cannot have been regarded as a conveyance in trust, "for at this early period trusts were an unknown refinement."¹⁶⁷ However, the grant was not to be considered void despite the fact that, "In general no grant can take effect unless there be a sufficient grantee then in existence."¹⁶⁸ It would form an exception, "like the *haereditas jacens* of the Roman Code in expectation of an heir,"¹⁶⁹ and should be considered as a public appropriation or dedication to pious uses. The land would have passed out of the donor, the crown being the patron of the future benefice, and ". . . it would not be competent for the crown to resume it at its own will, or alien the property without the same consent which is necessary for the alienation of other church property."¹⁷⁰

166. 9 Cranch 292, 323 (1815).

167. *Ibid.*, p. 331.

168. *Ibid.*, p. 330.

169. *Ibid.*, p. 331.

170. *Ibid.*, p. 332.

He then found that by provincial statute of 13 Ann, chapter 43, the towns in the province of New Hampshire were authorized to choose, settle and maintain their ministers, as well as to build and repair churches, etc. Other than this, the common law of England prevailed. Hence, "The respective towns in their corporate capacity had no control over the glebe . . . but . . . the glebe could not, before the erection of a church, be aliened by the crown without their consent."¹⁷¹

Returning to the nature of the English church:

But a mere voluntary society of Episcopalians within a town, unauthorized by the crown, could no more entitle themselves, on account of their religious tenets, to the glebe, than any other society worshipping therein. . . . The church entitled, must be a church recognized in law for this particular purpose. Whenever, therefore, within the province previous to the revolution, an Episcopal church was duly erected by the crown, in any town, the parson thereof regularly inducted had a right to the glebe in perpetual succession. Where no such church was duly erected by the crown, the glebe remained as an *haereditas jacens*, and the state which succeeded to the rights of the crown, might, with the assent of the town, alien or encumber it. . . .¹⁷²

He proceeded to review pertinent Vermont legislation, to determine its effect. He found that in 1787 selectmen were authorized, for a seven-year period, to care for and inspect glebes and lease them for the same period, to recover possession of them, ". . . but an exception is made in favor of ordained Episcopal ministers, who during their ministry within the same term, were allowed to take the profits of the glebes within their respective towns. . . ."¹⁷³; that an act of 1794 granted to the towns the entire property of the glebes, for the sole use and support of religious worship, and authorized selectmen to recover possession and lease; that in 1799 this last act was repealed; and that in 1805 the glebes were again granted to the towns, for use of schools in such towns, with selectmen given the power to sue for possession and to lease.¹⁷⁴ The effect of these acts of legislation was to make the ". . . towns respectively entitled to all the glebes situate therein which had not been pre-

171. *Ibid.*, p. 334.

172. *Ibid.*, pp. 334-335.

173. *Ibid.*, p. 335.

174. *Laws of Vermont*, 1787, pp. 7-8, October Session; *ibid.*, 1794-1796, 1794, pp. 101-103; *ibid.*, 1799, pp. 11-12, October Session; *ibid.*, 1805-1807, 1805, pp. 127-129.

viously appropriated by the regular and legal erection of an Episcopal church within the particular town.”¹⁷⁵ (He regarded the act of 1799 inoperative, in any case, it being beyond the power of the legislature to divest the rights granted in 1794. The act of 1805 he considered, in the same way as did Judge Moulton the legislation of 1935, to be simply a new right conferred which the towns might or might not exercise at their own pleasure—it could not rescind the grant as in the act of 1794 which had allowed the avails of the land for religious worship.) Thus it is found that the glebe right was transferred to the towns except where there was the required Episcopal ministerial establishment. The writer has been unable to determine in how many, or in which towns, this latter condition prevailed. He is informed, verbally, that they were few.

It is in this opinion that the remarks were made concerning the New Hampshire law of the public rights, to which reference was made earlier.¹⁷⁶ It is worthwhile to quote them:

There is another view of the subject which if any doubt hung over that which has been already suggested would decide the cause in favor of the Plaintiffs. And it is entitled to the more weight because it seems in analagous cases to have received the approbation and sanction of the state courts of New Hampshire. In the various royal charters of townships in which shares have been reserved for public purposes (and they are numerous) it has been held that the shares for the first settled minister and for the benefit of a school, were vested in the town in its corporate capacity; in the latter case as a fee simple absolute, in the former case as a base fee, determinable upon the settlement of the first minister by the town. . . . The foundation of this construction is supposed to be that the town is by law obliged to maintain public worship and public schools; and that therefore the legal title ought to pass to the town, which is considered as the real *cestui que use*. By analogy to this reasoning the share for a glebe might be deemed to be vested in the town for the use of an Episcopal church; and then before any such church should be established, and the use executed in its parson, by the joint assent of the legislature and the town, the land might at any time be appropriated to other purposes.¹⁷⁷

This case resulted in a large transfer of lease land acreage from one

175. 9 Cranch 292, 336 (1815).

176. *Supra*, p. 138.

177. 9 Cranch 292, 337 (1815).

trust to another, but cannot be accounted a loss of lease lands because the shares were still sequestered for public use.

The two other cases were efforts by the S. P. G. to secure the rights reserved in the Wentworth charters for the benefit of that organization. The New Haven case resulted from action taken under authority of an act of 1794 by which the Vermont legislature granted the S. P. G. rights to the respective towns to their use forever, for the support of schools.¹⁷⁸ The act empowered selectmen to sue for and recover, and to lease the lands. The selectmen of New Haven made a perpetual lease in 1800 to William Wheeler, who immediately entered upon the land and had ever since had possession thereof.

Other material facts stated were that the S. P. G. had been chartered during the reign of William III and had existed ever since as a corporation with authority to hold estates, etc., all members thereof being subjects to the king of Great Britain; that New Haven had been chartered in 1761, divided legally, and the right at issue set to the S. P. G.; that, "The plaintiffs never entered upon such lands, nor upon the demanded premises, nor in any manner asserted a claim or title thereto, until the commencement of this suit."¹⁷⁹

The town presented three principal contentions:

- 1) That the capacity of the plaintiffs, as a corporation, to hold lands in Vermont, ceased by, and as a consequence of, the revolution;
- 2) That the society being, in its politic capacity, a foreign corporation, it is incapable of holding land in Vermont, on the ground of alienage; and that its rights are not protected by the treaty of peace;
- 3) That if they were so protected, still the effect of the last war between the United States and Great Britain, was to put an end to that treaty, and, consequently, to rights derived under it, unless they had been revived by the treaty of peace, which was not done.¹⁸⁰

The opinion opened by premising the S. P. G. to be a private eleemosynary corporation capable of purchasing and receiving real estate.

Depending on the rulings in earlier U. S. opinions,¹⁸¹ the court

178. 8 Wheaton 464 (1823). *Laws of Vermont, 1794-1796, 1794*, pp. 114-116.

179. 8 Wheaton 464, 467 (1823).

180. *Ibid.*, p. 480.

181. *Dawson's Lessee v. Godfrey*, 4 Cranch 320 (1808); *Terrett, et al. v. Taylor, et al.*, 9 Cranch 43 (1815); and *Dartmouth College v. Woodward*, 4 Wheaton 518 (1819).

quickly disposed of the argument that the rights had been lost by the Revolution. As to alienage, Mr. Justice Washington was a bit tart. The fact of the Vermont courts having no jurisdiction over a British corporation to enforce the proper administration of the trust was considered as of no consequence whatever. It was to be assumed that the British courts could be trusted to do this. And further on: "For aught that appears to the contrary, the society was, at the moment when the act passed, fulfilling the trusts confided to it in the best manner. . . ." ¹⁸²

This phase of the opinion concluded simply:

In the present case, the plaintiffs were, at the period of the revolution, entitled to the legal estate in the land in question, under a valid and subsisting grant; and the only question is, whether the estate so vested in them, was divested by the revolution, and became the property of the State? We have endeavored to show that it was not. ¹⁸³

The effect of the treaty of peace was settled in terms of the decision in *Orr v. Hodgson* ¹⁸⁴ by which such estates were found to be protected by the sixth article of the treaty. The Vermont legislation of 1794 was of inferior authority to the treaty of 1783 and, so, void.

The third contention was no more impressive to the court. The War of 1812 could not divest rights of property which had vested under the preceding treaty: "Such a construction would overturn the best established doctrines of law, and sap the very foundation on which property rests." ¹⁸⁵

The S. P. G. had fared better than the Church. Its right had been confirmed in the court of last resort. It still remained, however, to gain actual possession of the various shares in the different towns. The records of the Diocese indicate that this was not easy. Feeling in some places ran so high that the towns and those occupying the lands were reluctant to accept the fact of the decision. Various suits in ejectment were necessary to enforce the federal decision in particular instances. In the Town of Pawlet resistance was so stubborn as to bring the action into the federal court and conclude with another opinion from the United States Supreme Court. ¹⁸⁶

182. 8 Wheaton 464, 485 (1823).

183. *Ibid.*, p. 487.

184. 4 Wheaton 453 (1819).

185. 8 Wheaton 464, 494 (1823).

186. *S. P. G. v. Pawlet and Clarke*, 4 Peters 480 (1830).

The town, under the 1794 act of confiscation, had leased the lot to Ozias Clarke, who had previously been on the lot without right, as had his father before him, who had entered upon the land in 1780, so that the Clarkes had been on the land for more than forty years before this action was brought. As a consequence of this situation, the case varied from the New Haven action. Here, the issue was likewise raised as to whether the S. P. G. was a corporation capable of taking the grant; there was put, however, the further question of the effect of Vermont statutes of limitations in relation to the long adverse possession by the Clarkes.

The agreed statement of facts included data on the lease, items respecting various moves of the S. P. G. toward administering the lands, and various acts of the Vermont legislature. The opinion was another from Judge Story.

In respect to the first issue, he noted the charter of the S. P. G.; he pointed out that the grant to it in the Pawlet charter constituted recognition; and he further noticed that the Vermont act of 1794 itself admitted the existence of the corporation and its capacity, by the wording of the preamble to the act. He concluded this portion of his opinion by adverting to the decision in *S. P. G. v. New Haven*.¹⁸⁷

A careful review of the various statutes of limitations, between those of 1783 and 1819, revealed that the court could not consider the Clarke occupancy as protected from the action, which was brought in 1824. The occupancy was regarded, not as an ouster, but as an intrusion until the lease was granted in 1795. The land was protected by exemptions of public, pious and charitable lands until 1819, at which time such protection was removed for the S. P. G. lots. In fact, this act of 1819 showed that the S. P. G. lots were previously considered as protected.¹⁸⁸ So that at no time did the Clarke occupancy extend the prescribed time period.

As a subsidiary issue, the court disposed simply of the question of mesne profits for the plaintiff. It found that Vermont legislation, effective during the period of time under consideration, prohibited recovery of mesne profits except as consequent on improvements made by plaintiffs. The treaties of 1793 and 1794 did not apply: "They take the bene-

187. 8 Wheaton 464 (1823).

188. *Laws of Vermont, 1819-1821*, 1819, pp. 26-27.

fit of the statute remedy to recover their right to the lands; and they must take the remedy with all the statute restrictions.”¹⁸⁹

Besides the immediate effect of these three decisions on the particular rights involved, it is seen that the whole system of public lands in Vermont was before the eyes of the court, including the practice of perpetual leases. The court tacitly acquiesced in the characteristics of the system as a public institution. Nowhere in the three opinions is there any *dictum* which would indicate a disapproval by the court of the relationships established by Vermont practices.

189. 4 Peters 480, 510 (1830).

Chapter VI

THE LEASE LANDS AND THE LEGISLATURE

This section is intended only to high-light the course of legislation, as related to the lease lands. There will be no exhaustive review of individual acts. Rather, the emphasis will be on the nature of policy, changes of importance in policy, or lack of a clear-cut policy, as expressed by the legislature.

The several lists of acts of legislation contained in Appendix B are believed to be complete for the subjects covered therein. It must be admitted here that there is a possibility of omission of acts. As with the *Reports* of the court, the indices in the volumes of the *Laws* were not reliable for the purpose of this study. Consequently, the procedure of the research had to be a page-by-page review of the *Laws of Vermont* for the period of approximately 150 years. Despite this effort, two facts militate against certainty of coverage. One is that over a considerable period of time, the titles of acts are not trustworthy as to the contents of the acts. The other, noted before, was the early custom of including various subjects within a single act, such subjects at times having little relationship. Nevertheless, if there should, perchance, be omissions, they are certainly few and unimportant. This assertion is safe because of the legislative custom in Vermont of reference to previous acts on the same subject. Furthermore, the various compilations of the laws were studied. Several of them are carefully annotated respecting the session laws preceding the compilations in question. Thus, two more-or-less adequate cross-checks were available.

In any case, the compilation in Appendix B is assuredly useful for those who may wish to pursue further any particular aspect of the lease lands. Probably the most potentially useful section is that containing the acts respecting town and county boundary line problems. (As for the other topics, the court has done much to crystallize the situation of the lease lands.) Here is the point of departure for any thoroughgoing effort to identify individual parcels, or to determine accurately the position of the towns with regard to sequestered lands.

Insofar as the material has been parallel, this section is developed in the same order of topics as was followed in the analysis of the work of the court. It will be seen that there is not a complete parallel simply because there are topics of concern in the one section which have no place in the other.

LEASES

Legislation affords no generalization of a policy respecting disposition of the public lands by lease, or otherwise. It will be seen later that the legislature has made broad over-all policy on the lands in certain matters such as tax exemption and the application of statutes of limitations. Such is not the case, however, in the matter of leases. Indeed, a study of pertinent laws tends to support the view that the doctrine respecting durable leasing of the public lands developed chiefly in the hands of the judges. The legislature has simply treated each individual situation individually, and one finds a wide variety of provisions for the various groups of lands. So much so that it has not seemed useful to compile them as a separate topic. They will be found with the laws pertaining to the various classes of lease lands. This much can be said: the product of the legislature indicates a lack of policy respecting the public lands as an institution of the state, indeed an absence of an appreciation that the lands constituted a political institution, or system.

CONVEYANCING

The laws respecting conveyancing¹ represent a variety of legislative interests and indicate thereby something of the condition of land affairs in the state. They include the early provisions for recording conveyances in town and county clerks' offices; prohibition of title of religious property vesting in any person by designation of his ecclesiastical office; several attempts to solve the problem of conveyance of property while that property is held adversely by a third party; provision for quieting titles conveyed by a collector's deed; and other topics of like nature. A particularly interesting act, for those persons concerned with the lease lands, provided:

Any person conveying knowingly, with intent to defraud, any encumbered real estate, who receives any consideration for such conveyance without notifying the recipient of the title, shall be

1. App. B, sec. 1.

subject to a fine not to exceed \$1000, or to a penalty not to exceed three years in prison, or both.²

Several laws have immediate interest respecting the public lands, among which may be included the act authorizing the sale of the Dartmouth College holdings in Wheelock.³ One, in particular, is noteworthy.⁴ It authorized the selectmen of Irasburgh to convey by deed "grammar school lot number one hundred and ninety-two in said town." The proceeds were to be kept in trust, and the interest was to go to such incorporated academy or grammar school as a majority of the town's legal voters should direct. Why this should have been enacted, or what action ensued, is not known.

Interestingly, the University was authorized, in 1925, to convey its lease lands, by quit-claim deed or otherwise, insofar as this could be done without injury to the rights of lessees. The avails were to be kept intact and the income devoted to the purpose of the original trust. It would appear not to have been effective in practice. People at the University are unaware of it. Indeed, it would seem to have made the 1935 act unnecessary. Furthermore, it contained a requirement that the University report biennially to the legislature "as to the exact status of said funds."⁵ No evidence was found of any such reports.

Two acts which attract attention provided for transfer to the state of the property of the Lamoille and Orange county grammar schools, for so long as the state should operate educational institutions at those places.⁶ In the first instance the conveyance was by a ninety-nine year lease. In the second, it was by "assigning, transferring and conveying." Thus we find the state in the position of administrator of lease lands. In the case of the Randolph school, the act specified that the state Treasurer should administer trust property. Yet, the writer could obtain no information about this from the Treasurer's office.

This group of laws, of course, includes the legislation of 1935 and 1937 which authorized the sale of lease lands and which has already been discussed.

Another act of 1937 is somewhat ambiguous and, hence, doubtful of

2. *Laws of Vermont*, 1878, p. 61.

3. *Ibid.*, 1849-1851, 1851, p. 140. This act is pertinent because it authorized the sale of land under lease only to lessees who wished to purchase. Thus, it was to some extent less liberal than the acts of 1935 and 1937.

4. *Ibid.*, 1886, p. 214.

5. *Ibid.*, 1925, p. 52.

6. *Ibid.*, 1910, pp. 64-66; *ibid.*, 1931, pp. 199-200.

its application to this study. It provides for transfer of property by an incorporated academy, or other educational institution, to the town school district or incorporated school district in which the incorporated institution is situated. The act is questionable in that its wording might, or might not, be interpreted to include public lands held by the incorporated school.⁷

NEW YORK-NEW HAMPSHIRE CONTROVERSY

The legislature never spoke definitively respecting the New York-New Hampshire controversy. The nearest approach to such an action was the legislation implementing the agreement reached by the boundary commissions of New York and Vermont. This included the original act⁸ as well as subsequent acts levying a tax to pay the \$30,000, providing for setting boundary monuments, etc. However, the legislature concerned itself variously with the residue of the controversy, notably by a series of acts which took notice of conflicting land claims and prohibited action respecting such claims in the courts. These acts varied. Some simply suspended the use of the courts for a specified time; one provided for a commission to hear disputes; and in one case the legislature itself assumed the function of a chancery court and issued a decree in the form of an act. Of other pertinent acts, the following will illustrate the variety to be found and the general character of the legislation relating to this subject: one hundred dollars was appropriated to be paid to Reuben Jones of Jay, New York, as “. . . compensation for his services in support of the claims of the inhabitants of the New Hampshire Grants, before the organization of this State.”⁹

It is not surprising that such should be the legislative record. Various sources, such as the journals of the time, indicate clearly that the greater part of the membership of the legislature took for granted the validity of the New Hampshire grants and the relationship with that province which the grants presupposed and, conversely, that they saw no merit in the New York claims.

STATUTES OF LIMITATIONS

The statutes of limitations respecting land affairs, enacted by the Vermont legislature in the early period, present a somewhat bewildering

7. *Ibid.*, 1937, p. 110.

8. *Statutes of the State of Vermont, Revised* (1787), pp. 259-261.

9. *Laws of Vermont, 1819-1821, 1821*, p. 121.

picture. Considerable effort is required to sort them out to a point where one can discern the status of the public lands at any given time. Judge Story's analysis of the position of the S. P. G. right gives a good example of its complexity.¹⁰ In twenty years' time, between 1783 and 1802, there were nine enactments of importance.

A review of the whole record might, at first glance, lead to the conclusion that the legislature had vacillated in its policy of protection of the public lands from adverse possession. There is at least some plausibility to this conclusion, but, taking the record in its entirety, it is not the correct one. Despite some see-sawing in the statutes, the public rights were actually protected from adverse possession, excepting the S. P. G. right.

Because of its influence in contributing to the preservation of the lease land system and because of the complexity of the picture, it is thought to be useful to portray the development of this legal topic in some detail.¹¹

The first enactment on which information is now available occurred in 1783. It was simple and provided a three-year limitation on actions. No exemption of the public lands was included. A year later another act, in effect, nullified that one by suspending use of the courts in land controversies. Again, after another year, the act of 1785 continued the three-year limitation, but this one specifically exempted the public lands.

In March, 1787, the whole business was overhauled, the period of limitation being changed from three to fifteen years. Here there was no exemption of the public lands, but the S. P. G. was conceivably protected, undoubtedly by inadvertence, through a clause exempting the property held by "persons beyond seas, outside of the United States."¹² In 1790 an act moved the effective date of this statute to December, 1787.

On November 6, 1797, an act was passed which provided that all actions accruing under earlier statutes of limitations were to remain in full force and effect. Four days later, a complete statute of limitations was passed, repealing and superseding the act of 1787. For the purpose

10. *S. P. G. v. Pawlet and Clarke*, 4 Peters 48 (1830).

11. The individual acts are not cited here as they are all to be found in App. B, sec. 4.

12. Judge Story alluded to this but did not rule on it, as being unnecessary to the case, since he found the S. P. G. right protected by a later act. However, the tone of his remarks leads to the view that the clause could well have been relied upon, if needed. *S. P. G. v. Pawlet and Clarke*, 4 Peters 48 (1830).

of this study, it contained the same provisions. That is, there was no exemption of the public lands, but there was the protection for persons beyond seas.

It seems to the present writer, as an inescapable conclusion, that the omission of protection of the public lands was by oversight rather than intention. The first reason for this view is the nature of the whole legislative record of the time. A study of the laws brings to light such defects on many subjects other than the lease lands. These instances are high-lighted by subsequent acts of amendment intended to repair such failures. Indeed, in many instances, the subsequent amending acts were explicit in respect to the faults of the earlier acts to which they referred. In other words, this omission of protection of the public lands can be regarded simply as an example of the lack of experience and the conditions of turmoil from which the legislature suffered. This position is supported by the subsequent reasons offered, the next of which is the fact that presently one finds the statutes of limitations changed again so as to protect the public lands, as they had been by the 1785 act. Finally, it is difficult to accept the proposition that the legislature of that day would intentionally have singled out the S. P. G. right, from all the others, and afforded it protection. It must be remembered that this was the very time during which the legislature was concerned to confiscate the glebe and the S. P. G. rights.

In any case, the situation was soon changed. In 1801, an act amended the act of November 6, 1797, to exempt the public lands. And in 1802 a new statute of limitations was written which included the exemption. In fact, this act exempted them from "any statute of limitations heretofore passed." It is to be seen that this change occurred fourteen years after the protection had been removed in 1787, and inasmuch as the latter legislation set a limiting period of fifteen years, the public lands would not have been liable to loss by failure of the trustees to bring action.

The next step in the development occurred in 1819 when the legislature removed the protection afforded by the 1801 and 1802 acts, so far as the S. P. G. right was concerned. In 1832, following Judge Story's remarks in the 1830 Pawlet case,¹³ the protection of "persons beyond seas" was repealed.

In 1839 a notable step was taken, providing that the public lands, generally, should not be exempted after January 1, 1842. Apparently, the

13. S. P. G. v. Pawlet and Clarke, 4 Peters 48 (1830).

legislators considered that the trustees should by then have had sufficient opportunity to protect their grants. This provision appears in the *Revised Statutes* of 1839 and the *Compiled Statutes* of 1850.¹⁴

It would seem, however, that the trustees of the public lands were able to convince the legislature otherwise because in 1854 that provision was repealed. Furthermore, the 1854 act specifically stated that all of the public lands were exempted and went on to state that “. . . any proper action for the recovery of such lands may be, at any time hereafter, commenced and prosecuted to final judgment and recovery of possession.”¹⁵ As with the earlier lapse of protection, this one was terminated before the prescribed fifteen-year limitation so that, again, the trustees had, in effect, enjoyed protection.

It is to be noticed, too, that the S. P. G. right again enjoyed protection after a period of thirty-five years. As has been remarked earlier, it is not known to what extent the lands pertaining to this right were lost in that time.

The act of 1854 closes the development, so far as the lease lands are related to the statutes of limitations. The provisions of that act have been retained and appear, unchanged, in all subsequent compilations of the laws, including the latest.

An interesting side-light on the attitude of the legislature is available in an act of 1811 which falls within this topic because it took account of the problem of adverse possession of the public lands in unusual circumstances. The act demonstrates the interest of the legislators in the public rights. It summarizes certain matters in the land history of the Town of Shelburne, including the fact that in the early settlement no allotment was made for the public shares. It concludes by specifying certain numbered lots for each share and then authorizes the selectmen to substitute others, “in lieu,” in case any of those should have been occupied adversely.

BETTERMENTS ACTS

The so-called betterments acts have a close relationship to the statutes of limitations, and they illuminate, as well as any piece of data can, the confused condition of land and land affairs in Vermont's early period. The first of them was enacted as early as 1780. They appeared from time to time in the laws, as the legislature saw fit to revise their pro-

14. *Revised Statutes* (1839), ch. 58, sec. 4; *Compiled Statutes* (1850), ch. 61, sec. 4.

15. *Laws of Vermont, 1852-1854*, 1854, p. 17.

visions.¹⁶ The last one appears as late as 1856. The very nature of the acts is significant, and the revisions and amendments indicate the extent of uncertainty even in the minds of the legislators. The *Journal* of the General Assembly for 1785 shows that the passage of these acts was apt to follow extended and stormy debate on land problems.¹⁷ As to the lease lands, here, too, the legislature failed to follow a firm policy. Only the acts of 1785 and 1800 protect the trustees of the public lands from suits for recovery on betterments. However, the omission of the specific exemption of the public lands in the later acts need not be regarded as too serious for the trustees. The act of 1820 and all later versions contained a proviso that the procedure for recovery on betterments should not apply to persons entering upon land after the date of the act. Presumably, the trustees would have had a sufficient opportunity by 1820 to locate lands which had been so occupied.¹⁸

EASEMENTS

The acts found in section 6 of Appendix B, respecting the general problems of easements are various, dealing with matters of highways, turnpikes, railroads, and flood control flowage. They were included in the study as being representative of Vermont conditions. Among others, they show up both the early state concern to develop lines of communication and the difficulties sometimes encountered by the state in securing local cooperation.

The first point to be observed is that the general nature of the law in Vermont is not unusual. The second and most immediately interesting point for this study is that in only two acts was there any reference, of any kind, to the public lands. One has already been discussed.¹⁹ This is the act by which the legislature undertook to iron out highway problems between Montpelier and East Montpelier and, in so doing, accepted the fact of highway easements existing on those public lands. The other act was earlier and took the opposite position, by implication.²⁰ It was

16. See App. B, sec. 5.

17. *Journal of the General Assembly, October 1784 and June 1785, 1785, passim.*

18. An exception to this statement must be recognized with respect to the S. P. G. right. It will be recalled that the United States Supreme Court's confirmation of the right in the Society did not occur until 1823: *S. P. G. v. New Haven and Wheeler*, 8 Wheaton 464.

19. *Supra*, p. 175, n. 320.

20. *Laws of the State of Vermont, Revised (1797)*, App., pp. 71-79.

basically an act laying a tax on land for highway development. The public lands were exempted. The most interesting aspect of the law, however, was that the public lands were exempted from the customary allotment of land for highways. This practice of allotment has not before been described. It had its background in the Wentworth charters. In those instruments, there was the provision that, of the total acreage of the grant (customarily 23,040 acres), an allowance of 1040 acres for "HighWays and unimprovable Lands by Rocks, Ponds, Mountains and Rivers" should be set aside before division of the grant should occur.²¹

While this provision was not included in the Vermont charters, the custom was continued in practice by the procedure in Vermont of deducting five acres on the hundred in laws levying a land tax for highways. The deduction was based on the presumption that such a proportion of land should be available for sequestration in use as highway right-of-way. Thus, the act in question inevitably leads to the conclusion that the legislature then considered the public lands as exempt from the five percent allotment of acreage for highway use. This was the only act which treated the public lands in this way; later acts failed entirely to mention them.

PROPRIETORS' DOINGS

The acts listed under the title "Proprietors' Doings"²² have two uses. Like the betterments acts, they demonstrate thoroughly the conditions of turmoil and confusion in which land affairs got under way in Vermont. They also are essential in any further study of the lease lands which should attempt to determine the lands in any particular town. There are included a few general acts regulating proprietors' activities where the nature of the provisions seemed to have a place in this compilation. It should be understood that there were numerous other general acts specifying proprietors' procedure which have not been included. These dealt with such matters as the mode of publication of anticipated meetings, etc. Although not discussed here, the fact should not be ignored that the legislature strove valiantly and frequently with the problems created by the proclivity of proprietors for unorthodox transactions.

One other explanatory remark is in order. The subject matter of acts in this section is somewhat broader than is indicated by the section title.

21. *E.g.*, see charter of Guildhall, *N. H. S. P.*, XXVI, III, 197.

22. *App. B*, sec. 7.

The list includes numerous laws by which the legislature validated early defects in the conduct of the organized town affairs. This arrangement of material was made because many of the incorrect ways of the towns stemmed from preceding improper proprietors' activities. Furthermore, the illegalities in early town business were of a piece with similar proprietors' doings, due either to ignorance or carelessness of the proper ways to do business or to efforts at wrongful land manipulations.

The early *Laws* were full of acts, additions, amendments and repealers of acts, dealing with methods of collecting land taxes, regulation of vendues, attempts to secure proprietors' records, attempts to secure land surveys and determine town lines, prevention of frauds and so on. Many of the laws listed in this respective section of Appendix B are actions taken by the legislature to validate otherwise illegal transactions by the proprietors or the subsequent town organization. It is clear from the phraseology of these laws that the legislature was reluctant to condone such things but felt constrained to do so in order to protect established rights of innocent parties. In some instances conditions were so bad that the legislature refused to accede to them and took some other course such as appointment of commissioners to settle matters, or even ordering that the proprietors do things over again. A few of the acts listed refer specifically to the public rights where the legislature intervened to see that those rights secured the shares to which they were entitled. The other acts, however, are equally vital in any particularized land study. They would be the source of explanation of discrepancies between charter provisions and actual land locations.

EMINENT DOMAIN

The laws of interest to this study respecting condemnation under the power of eminent domain are few and of recent date.²³ Of those compiled, it is to be noticed that the greater part do not specify authority to condemn property already devoted to a public use. In fact, this was the reason for their inclusion—to show how few have been the legislative decisions to subject the lease lands to this hazard, even in cases in which one would normally expect it to be done. Some of these acts come within the compilation because they refer to the acquisition of land by the federal government for its forest area. The nature of the earlier comment on this activity is thought to justify making available the legislation on which it has rested.²⁴

23. App. B, sec. 8.

24. *Supra*, pp. 172-175.

In respect to the several acts just referred to, it will be seen that they turn on a clause which is common to all of them: "The consent of the state of Vermont is hereby given to the acquisition by the United States, by purchase, gift or condemnation with adequate compensation, of such lands in Vermont *as in the opinion of the federal government* may be needed. . . ." ²⁵ It might be argued that this is implied consent to the taking of land already devoted to a public use, inasmuch as the grant of authority is so broad and unrestricted. Two arguments are advanced against such a proposition. The first is the demonstrated position of the court that an implication must be clear and must be inescapable by virtue of the land needed. The second is that in several other acts the Vermont legislature did specifically include land in public use. These were for activities of the Board of Public Works; for airport development, when approved by the Public Service Commission; for interstate flood control development; and the general provision in the 1937 act. ²⁶ It seems significant, too, that these acts bracketed, in time, the federal forest area acts.

None of the numerous acts of incorporation of businesses, in which condemnation authority was granted, allowed of the taking of land already devoted to a public use. Nor did the legislation setting up the state forest program. As to the latter, it will be recalled that the policy has been for the state to become lessee.

EJECTMENT

The intent of the legislature that the trustees of public lands should have authority to recover by suits in ejectment is clearly demonstrated by the various laws referring to one or another lease land situation. ²⁷

TOWN LINE PROBLEMS

Of the laws on town and town line problems, some are found to include provisions specifically dealing with the lease lands, or the avails therefrom. ²⁸ Many others fail entirely to mention them. This distinction cannot be used with safety by those who would find particular parcels of lease land.

25. Italics mine. For example, see *Laws of Vermont*, 1925, p. 3.

26. *P. L.*, ch. 207, secs. 4974-4985; *Laws of Vermont*, 1941, pp. 66-67; *ibid.*, 1937, pp. 89, 281.

27. App. B, sec. 9.

28. App. B, sec. 10.

The very bulk of this section of the appendix indicates the juggling to which the towns have been subjected. It shows how far astray one would go who undertook to rely on the terms of the town charters. And it demonstrates what has been said elsewhere—that a particularized study of lease lands must commence with a determination of the towns in which such parcels are presumed to lie. In this connection, it is well to reiterate the caution that action resultant on these laws would have to be checked in the records of the towns concerned because of the long-standing custom of writing such acts conditional on town approval.

COUNTY LINES

Two explanatory remarks are in order respecting the laws compiled under the title "County Lines."²⁹ For one, it should be noted that they include the various acts by which counties were, from time to time, organized, commencing with the earliest extant action, that of 1778. These laws fall into this category, logically, because, after that act, all others establishing new counties involved the partitioning of those existing at the time. The other comment is that some duplication is found between this section and the one preceding. Besides those acts dividing counties into newer counties, numerous county line changes have involved the shifting of a town, or towns, or parts thereof, from one county into an adjacent county. As with the laws on town changes, some of these make provision for disposition of the lease lands, and many do not. Compared to the changes made in the towns, it is to be seen that the county changes are much less frequent. But, there was sufficient activity to create some confusions. It is noticeable that there have been very few acts of a general nature, such as those establishing the procedure for making changes, with reference to the counties.

UNORGANIZED AREAS

The title "Gores" was used for convenience to cover the whole problem of unorganized areas.³⁰ This fits Vermont practice and is historically justified because, of such areas, the gores have, in the past, formed the principal element. Other terms were used, however, to cover small, or individual, grants of land. These included "grants," "legs" and "tongues." Unorganized towns are also a part of this topic. There was a time, in the

29. App. B, sec. 11.

30. App. B, sec. 12.

early period, when they were a subject of consequence—before settlement made possible town organization of some of the chartered grants. Then they became almost non-existent. More recently, they have reappeared through the process of de-organizing towns which have lost their former population, and there is some thought in the state that more of this should occur. In any case, whenever there were general laws written, they applied to all unorganized areas.

Such laws were few in number. The first one of real importance to this study was that of 1854 which provided for administration of lease lands by the county treasurer. The great majority of the acts in this section deal either with the making or confirming of such grants, or they have to do with the annexation of gores to one or another adjacent town or towns. Some of the laws listed are tax laws. These are of interest here as they may, or may not, have affected public lands.

The gores cannot be ignored if the lease lands are to be investigated fully. Although many of such grants did not provide for reservation of public lands, some did.³¹ In addition, the ultimate disposition of the gores affected town lines, and thus they must be accounted for if one is to locate lease land parcels, in the towns affected. And the general laws on unorganized areas will be of increasing concern respecting the lease lands if the de-organization movement progresses.

LOCAL OFFICERS

The laws on the duties of local officers are, as might be expected, of a wide variety.³² They apply to various officers, and various duties. They serve to describe such duties, as they may have affected the lease lands, directly or indirectly. They also serve to demonstrate some of the difficulties in public administration which have existed in Vermont. In this latter respect, they indicate some of the ways in which lease land parcels could have become beclouded through local administration.

Here are to be found the listers' laws, with their instructions respecting sequestered lands. The selectmen are referred to in several capacities—taking control of and leasing some classes of the lands, abating taxes, distributing the avails of religious and school lands, and so on. One duty of especial interest was that, in the early days, of laying out the divisions where the proprietors failed to do so. Town clerks'

31. *E.g.*, Goshen Gore.

32. App. B, sec. 13.

duties, with reference to records, appear, as well as legislative efforts to correct conditions where clerks have been remiss. The factors of negligence and ignorance show up strongly in such acts.

The laws on tax collection are to the point in the way in which they illustrate the difficulties with which the state government has had to contend. Many were the troubles encountered in attempting to require proper collection of taxes and proper tax records. It is clearly probable that the laxness so prevalent, particularly in the early period, accounts for some instances in which lease lands became "lost." A special aspect of the situation, which would have been particularly contributory, is represented by the legislation which established a fee system for reimbursing those doing tax collecting. Records, generally, as well as other elements of local administration, were so primitive that there would be no necessary correlation of the listers' and collectors' activities—such failures would be possible where the tax payers included a good proportion of unlettered "frontier" people.

School laws are included where the nature of the provisions may affect distribution of lease land avails and involve duties of selectmen and school directors, and it should be noted that some county officers are represented in the compilation—the county treasurer and sheriff, particularly. One further group of local officers is to be remarked. It should be understood that city officials carry out responsibilities, in their jurisdictions, parallel with those discharged by town officers elsewhere.

STATE TAX ACTS

It will be recalled that the opinion in *Herrick v. Randolph* was criticized, in part, with reference to the course of prior tax legislation, and exemption of the public lands therein.³³ Some effort is required if one is to perceive fully the relation of early tax legislation to the lease lands. A cursory survey of tax acts might easily lead to the conclusion that there had been no exemption in numerous instances.³⁴ This, however, would be an erroneous impression.

To begin with, it must be understood that the state government, for many years, financed itself, as did other states, by the device now referred to as locally-collected-state-shared taxes. That is, the state legislature would pass an act laying a tax of so much on the dollar of the

33. 13 Vt. 525 (1841). *Supra*, pp. 207-209.

34. See App. B, sec. 14.

grand list of the towns. The towns were then responsible for adding this levy to the tax rate set by the towns, collecting the whole tax due, and remitting to the state Treasurer that amount of the receipts due to the state levy.³⁵

Budgetary planning was, of course, unknown. So one finds, in the early years, a mass of particularized tax legislation. It was the custom to estimate the cost of any individual subject of legislation and then to pass a tax act providing revenue for that proposed expenditure. Such tax acts were, for the most part, extremely simple in form, merely stating the tax rate per dollar, as expressed either by "the grand list" or by "the polls and rateable estate" and specifying the expenditure purpose. These, as well as similar acts designed to provide revenue for general government purposes for the year, are those which could lead the investigator astray. To complete the picture, another series of tax acts of the legislature is of interest. These acts allowed various taxes for the use of the counties and were otherwise similar in all respects to those providing revenue for the state.³⁶

All of these acts must be read in relation to a separate series of acts—the so-called listers' laws.³⁷ The latter were not annual acts, but were passed from time to time when changes were deemed necessary. They were minute and voluminous in detail. They prescribed specifically the objects of taxation and those things exempted from taxation. They constituted an assessing manual for the town listers, but they were basically of the nature of assertions as to tax policy. In short, they described and established the composition of the grand list. It was in these listers' laws that one finds provision for tax exemption of the lease lands. And they were for some years the only statements of tax policy by the legislature. Thus, to understand a specific tax act, laying a levy on the grand list, one must be acquainted with the details of the listers' law in effect at that time.

35. As elsewhere, this procedure led to some competition between towns to remit as little as possible, through the well-known practice of low assessment rates balanced by higher local tax rates. The recent state Commissioner of Taxes has still been trying to convince local authorities of the merit in realistic assessments. It should be added, however, that in some cases the state tax was set at so many cents per acre of land. Here, this competition was avoided, but, on the other hand, these latter acts were particularly interesting for the lease lands as all such acreage was to be accounted for by abatement.

36. See App. B, sec. 15.

37. See App. B, sec. 13 and sec. 16.

As to the lease lands, all of the listers' laws provided them with exemption. The first modification of any kind is that in the act of 1825 which allowed taxation of the improvements on lease lands. This was the legislation underlying the litigation in *Herrick v. Randolph*.³⁸

TAX EXEMPTION

Tax legislation in Vermont, and particularly that affecting exemption, would make a study in itself of some considerable dimensions. The legislators have been notably preoccupied with the matter, and there is a vast number of acts in the record. Necessarily, only those laws of interest to this study have been compiled here.³⁹ An inspection of the extent of that list will show that, even within so limited a scope, a full discussion of the legislation would be beyond the range of an introductory study. In any case, it would be relatively pointless to describe, individually, many of the acts listed because they apply to individual towns or situations and can be arranged in series, the general nature of which can be demonstrated adequately for the present purpose.

In extension of the preceding comment, a generalization, of importance here, can be developed. Tax legislation illustrates preeminently the degree to which the Vermont legislature has been prone to indulge in special legislation. This is true generally, as well as in respect to taxation matters. (Another very clear example is found in the legislative record respecting incorporation of county grammar schools and academies.) The term "special legislation" is used here with the broadest connotation. Not only has the legislature acted particularistically for particular institutions; it has shown, frequently, a failure to decide upon, and follow through with, a policy which is reflected throughout a series of related acts—so much so that acts within a series even fail to show consistency of phraseology where it is reasonable to suppose that the legislature intended to be consistent.⁴⁰ The farther back in the record one goes, the more apparent this becomes.

It has been stated that the legislature has been consistent in allowing tax exemption of the lease lands.⁴¹ The comment above gives the

38. 13 Vt. 525 (1841); *Laws of Vermont, 1822-1826*, 1825, pp. 11-12. It is worthy of note that even when the S. P. G. right was excepted from the protection from adverse possession, there was no move to subject the right, as a whole, to taxation.

39. App. B, sec. 16.

40. It will be recalled that this characteristic was remarked in the discussion of town charters, *supra*, pp. 146-155.

41. *Supra*, p. 208.

appearance of a contradiction of this position. However, a description of the situation will afford a reconciliation. Basically, the earlier remark is correct—there has been an enduring policy of exemption, from the earliest acts on. But a detailed inspection of the *Laws* brings to light various instances in which no exempting clause was included in tax acts. An example is to be seen in land taxes which were laid from time to time, principally for roads and bridges. Such acts would appear in groups on consecutive pages of the *Laws*, each one applying to a particular town. Such groups are clearly related, both by their position in the *Laws* and their subject matter. In fact, one might well have expected them to appear as clauses within a single act. Yet some within such a group will include exemption of the public lands while others fail to do so. This happens not once, but often.⁴²

Even the series of acts dealing directly with the question of the public lands is not completely consistent.⁴³ One finds that, although the acts of 1779 and 1781 provided exemption, those of 1782, 1787, and 1794 lacked this clause. Yet, during this same period specific land taxes did provide exemption.⁴⁴ Furthermore, one finds in the *Journal* of the General Assembly for 1785, the bill, previously quoted, which proposed to prohibit taxation of the public lands.⁴⁵ It is evidence of the intent of the legislature to grant exemption even then. Since 1797 exemption has been provided for, the only modification appearing in the authority granted to tax the betterments on lease lands. The act passed in October, 1781, carries a preamble which indicates something of the legislators' concern: "Whereas the value of the landed interest . . . is greatly advanced by settlements being formed in the towns. . . ." The act went

42. *E.g.*, *Laws of Vermont, 1796-1798*, 1798, pp. 137-141.

43. These acts are the central point of interest here; so it has been thought advisable to specify them: Slade, *State Papers*, pp. 297-298, Feb. Session, 1779; *Statutes of the State of Vermont, Revised* (1797), App., pp. 28-32, Apr. Session, 1781; Slade, *op. cit.*, p. 440, Oct. Session, 1781; *Laws of Vermont* (1807 comp.), II, 305-309, Oct. Session, 1782; *ibid.*, II, 315-319, 412-414, Feb. Session, 1787; *Laws of Vermont*, 1787, p. 11, Oct. Session; *ibid.*, 1791, p. 19, Jan. Session; *Laws of Vermont* (1807 comp.), II, 320-324, 1794; *Statutes of the State of Vermont, Revised* (1797), p. 569, Feb. Session, 1797; *Laws of Vermont, 1811-1814*, 1814, pp. 82-83; *ibid.*, 1819-1821, 1819, p. 26; *ibid.*, 1822-1826, 1825, pp. 11-12; *ibid.*, 1827, p. 12, Oct. Session; *ibid.*, 1833, p. 24; *ibid.*, 1841-1844, 1841, p. 11; *ibid.*, 1855, pp. 44-59; *ibid.*, 1860, pp. 28-29; *ibid.*, 1876, pp. 88-89; *ibid.*, 1896, p. 10; *ibid.*, 1898, pp. 10-11; *ibid.*, 1906, p. 19; *ibid.*, 1908, pp. 22-23; *ibid.*, 1910, pp. 23-24; *ibid.*, 1915, pp. 96-97; *ibid.*, 1917, pp. 33-35.

44. *E.g.*, Slade, *State Papers*, p. 509, Oct. Session, 1786.

45. June 17, 1785, pp. 4, 41. *Supra*, p. 206, n. 120.

on to authorize the towns to levy taxes for "building houses of public worship, school houses, and bridges." It concluded by exempting "such lots or rights of land, as are appropriated to public or pious uses. . . ." ⁴⁶

An act of 1850 is of some interest. ⁴⁷ It shows the beginnings of the later trend away from tax exemptions which was remarked in the preceding chapter ⁴⁸ and at the same time demonstrates the special treatment accorded the lease lands. It authorized the taxing of certain college lands under durable leases, but specifically excluded the lands reserved in the town charters.

In later years tax exemption came to be a concern because of its supposed influence on the tax burden of non-exempted property. But the legislature still failed to develop a settled position. The activities of the 1915 session illustrate this. On the one hand, a joint resolution took notice of the conditions, the attitude of the tax payers of the state, and their "desired relief from the burdensome conditions of local taxation. . . ." ⁴⁹ It set up a joint special committee to investigate and hold hearings and report. On the other hand, one finds the same session granting new exemptions. ⁵⁰ The lack of policy is more generally demonstrated by the way in which, over a long period, various exemptions were being curtailed at the same time that other new exemptions were established. In fact, the only exemption encountered which has been relatively continuous has been that granted the lease lands. Even in 1939 when the Commissioner of Taxes was directed to report to the 1941 session on various classes of exemptions, the lease lands were not included in the directive. The preamble of this act is significant: "Whereas, much special legislation has been enacted exempting real and personal property from taxes, resulting in loss of revenue. . . ." ⁵¹

Among the laws listed under "Tax Exemption" one encounters provisions in certain acts which throw an interesting sidelight on Vermont affairs. These acts variously required local officers to prepare and compile detailed and specific data on all public lands within their respective towns. This was desired in connection with abatement of taxes, estimating revenues, and so on. The first instance found was as early as

46. Slade, *op. cit.*, p. 440.

47. *Laws of Vermont, 1849-1851*, 1850, pp. 16-17.

48. *Supra*, pp. 213-215.

49. *Laws of Vermont*, 1915, p. 535.

50. *Ibid.*, 1915, p. 378.

51. *Ibid.*, 1939, p. 422.

1797,⁵² and the requirement appears at intervals thereafter. If these directives had been accomplished properly, starting at so early a date, the present conditions of uncertainty respecting numerous parcels of lease land would have been prevented.

THE UNIVERSITY

The acts listed as pertaining to the college right include, besides those applying to the University, a few which refer to Dartmouth College, Middlebury College and Norwich University.⁵³ These are thought to merit inclusion in order to clarify some existing confusion of thought respecting the lease lands so far as the "college right" is concerned. An example of the sort of misconception to be encountered is found in the statements made to the writer, by officials of Middlebury College and others, that the latter institution is trustee of some of the lands which are the subject of this study. Actually, Middlebury College is not, but any attempt to explain this fact is apt to be met by polite, but firm, skepticism, so deeply entrenched has become the accepted notion. The act of 1800 specifically denied to Middlebury College all the rights of lands reserved by the town charters for a college.⁵⁴ Those items referring to Dartmouth College demonstrate the interest and early proposals of that institution as to lands in Vermont and cover the final disposition of the problem thus created, by the grant of the Town of Wheelock.

The compilation includes a number of basic acts affecting the University. For the present study, they may be roughly classified into several purpose categories. That group of most direct interest includes the acts which specifically dealt, in one way or another, with the University's possession of the "college right" lands.⁵⁵ They commence with the act of 1791, which was the charter of the institution, and continue through to 1937. The charter was twice amended respecting the grant of the public lands, each instance being intended to broaden and strengthen the legal right of the University in those lands. In the present century the 1925 and 1935 acts authorized sale of the lands, under

52. *Laws of the State of Vermont, Revised* (1797), App., p. 78.

53. See App. B, sec. 17.

54. *Laws of Vermont*, 1800, p. 40. This was the act incorporating the college.

55. *Ibid.*, 1791, Oct. Session, pp. 29-30; *ibid.*, 1802-1804, 1802, pp. 156-158; *ibid.*, 1808-1810, 1810, pp. 117-120; *ibid.*, 1861-1863, 1863, pp. 61-67; *ibid.*, 1925, p. 52; *ibid.*, 1935, pp. 78-79; *ibid.*, 1937, pp. 108-109.

certain limitations. Finally, an act of 1937 presumably allows the University, with approval of the court of chancery, to expend principal, as well as interest of moneys derived from the lease lands.

A second group of acts deals with the problem of meeting the requirements of the Morrill Act, and the change in organization which was necessary in order to receive the benefits of that legislation.⁵⁶

It must be understood, that the University of Vermont is not truly a "state university," as that term is used in the middle and far west. This assertion would draw a strong denial from some Vermonters and an equally strong support from others because the status of the institution, and its precise relation to the state, has been the subject of much speculation and controversy.

In any case, the situation apparently did not meet the requirements of the Morrill Act. So, it was found necessary to create a new educational corporation in the form of a state agricultural college. The University's friends were close enough to the state government so that the matter did not rest there. A third corporation was created, styled the University of Vermont and State Agricultural College, which continues to the present time. To make a simplified explanation, it is analogous to a "holding company" in the business realm. The two earlier and separate institutions did not cease to exist, but were simply conjoined through the medium of the third corporation. This was achieved only after much pulling and hauling and trial and error, as the legislative record from 1862 until 1866 testifies. Indeed, the 1945 act listed is interesting as illuminating the situation. It established a commission to study the finances of the University and the relation of that institution to the state.

The last group of acts is concerned most directly with the relations between the University and the state.⁵⁷ These acts are found to modify the composition of the Board of Trustees and achieve other like measures. They are of interest here solely as they furnish a significant commentary on the basis on which the early legislatures performed the function of granting away the public rights.

There is no evidence by which to know whether the legislation of 1787 was effective.⁵⁸ It provided for a state administrator in each county

56. *Ibid.*, 1861-1863, 1862, p. 67; *ibid.*, 1861-1863, 1863, pp. 36, 61-67; *ibid.*, 1864, pp. 100-105, 106-107; *ibid.*, 1865, pp. 96-102; *ibid.*, 1866, p. 105; *ibid.*, 1945, pp. 98-99.

57. *Ibid.*, 1822-1826, 1823, p. 27; *ibid.*, 1827-1831, 1828, pp. 11-12; *ibid.*, 1845-1848, 1845, p. 52; *ibid.*, 1878, pp. 56-57; *ibid.*, 1943, pp. 90-91.

58. *Ibid.*, 1787, Oct. Session, pp. 7-8.

for the lots in the college right for the septenary. This act remained on the books in the revision published in 1791, despite the fact that the University was chartered in that year and granted the college right.⁵⁹ Small wonder that some question developed as to the extent of University control of the lands!

Several of the acts listed deal with problems of the lease lands in certain particular towns. Such acts are a part of the data which would be needed by anyone going deeply into the various parcels of lease lands. They also illustrate the legislature's interest in the public rights, and the ways in which that body undertook to solve the problems which arose.

THE S. P. G.

The list of acts directly concerning the S. P. G. right are relatively few in number.⁶⁰ Two points are to be noticed about them. One is that they are more dramatic in character than the legislation pertaining to other public rights. This effect is the result of the antagonism of the early legislature to the Church of England and the effort to confiscate the glebe and S. P. G. rights, followed by the later maneuver of subjecting the S. P. G. right to the provisions of the statutes of limitations respecting adverse possession.

An odd fact appears upon the reading of these acts. The first aimed at the church was that of 1787.⁶¹ In this, the selectmen were directed to take the care and inspection of the lots of the glebe and society rights, to see that the rights were properly allotted, and to lease them for the period of that septenary. Furthermore, the selectmen were to take whatever possessory action might be necessary before the courts to oust wrongful possessors. But there was no word respecting disposition of the resultant lease-rent! One can only suppose that any such revenue would have gone into the town general fund. It was not until the 1794 act of confiscation (or as it was referred to, appropriation) that one finds the provision for the avails to go to the schools. It may be noted, too, that this act changed the authorized term for leases from the period of the septenary to perpetuity.⁶²

The other noticeable characteristic of this compilation is the demonstration that the legislature did regard the S. P. G. right as being of

59. *Statutes of the State of Vermont, Revised* (1787), pp. 208-209.

60. App. B, sec. 18.

61. *Laws of Vermont*, 1787, Oct. Session, pp. 7-8.

62. *Ibid.*, 1794-1796, 1794, pp. 114-116.

equivalent status with the other public rights. The acts listed for 1801 and 1811 are clear examples. In each instance there was, in the respective towns involved, some difficulty as to the allotment of land for the public rights. These acts were legislative solutions of the trouble. And it is to be seen that in each case there was no distinction made respecting the S. P. G. right.

A further element of the position, just reviewed above, is seen in the series of acts commencing with those in 1868 by which the property-holding status of the Episcopal parishes and the Diocese were regularized and statutory provisions were developed to substitute for the English law, which was reviewed so meticulously by Judge Story in *Pawlet v. Clark*⁶³ and which, of course, had been made void by the Revolution.

COUNTY GRAMMAR SCHOOLS

Much of what might otherwise have been written here about the county grammar schools and the public right reserved for them will have been handled elsewhere in this study, the matters being covered more appropriately at those places.⁶⁴

The first comment to be made respecting this topic is that the compilation of laws has been subdivided into two groups.⁶⁵ The first part of the list includes acts which unmistakably concern the lease lands in one way or another. The second part pertains to schools—academies, institutes, seminaries, incorporated high schools, etc.—which are thought not to have been involved in the lease lands. There was some consideration of omitting this latter group of acts, but the opposite decision was reached for several reasons. First of all, without a close, detailed individual study, it is impossible to be certain that none of those schools received benefits from the lease lands. Next, the internal characteristics of the two lists will show that it is difficult to derive many distinctions by which to determine why some schools received the lands and others did not. Three such distinctions are available, but they account for only a modest proportion of the second group. One is that no school for women seems to have received the benefit; a second is that those schools under immediate control of any religious organization were excluded; and, finally, those few schools which were based on the endowment of a single individual donor seem not to have been given the grants of public

63. 9 Cranch 292 (1815).

64. See chap. III, p. 81; chap. IV, *passim*; chap. VII, pp. 284-295.

65. App. B, sec. 19.

land. A third justification for inclusion of the second group of acts is that the two lists, together, give a more adequate picture of the flood and ebb of private school development in Vermont. Finally, together they likewise demonstrate the tremendous quantity of legislation which was enacted respecting secondary schools.

This last point deserves special emphasis. It is to be seen that the compilation in this section of the appendix exceeds, considerably, the extent of any other section, even those on taxation or town line changes. The extreme number of laws is partly accounted for by the simple fact that there were incorporations of a large number of schools. But this is no solution. The fact is that the legislature treated school problems particularistically, and this is the primary basis for the quantity of laws encountered. Probably, this legislative characteristic was a reflection of the particularistic localism of thinking which prevailed in Vermont on all matters of education.⁶⁶ However, for the purpose of this study it must be noted that the lack of broad basic policy respecting the schools was accompanied by an equal failure to develop a policy respecting the grammar school lands. Instead of applying a policy, subject to modification as conditions might change, the legislature undertook to cope with each individual situation separately, with the patch-work result which might be expected from such a course.

In order to make this condition clearer in its detailed characteristics, certain items from the appendix have been selected.

The requests for special acts of incorporation for Whitingham and Corinth academies were referred to the Committee on Education. The report of that committee is significant :

Your committee learn that one reason why individuals, wishing to establish such institutions, apply to the Legislature for a special act of incorporation, instead of associating agreeably to the provisions of the general law, is an apprehension, in case the State should hereafter see fit to bestow pecuniary aid upon our literary institutions, that those incorporated under the general law would not be viewed with the same favor and consideration as those

66. The writer's own town of Weybridge offers an extreme illustration of the survival of such local thinking. The town, for geographic reasons, has three schools, of which two are at present in use. With a total town population of around 500, there are *two* separate Parent-Teacher Associations, attached, respectively, to the two schools, the one "on the hill" and the other "in the valley." In fact, the operation of the two schools, in view of the existing and functioning school bus service, is significant. One of the schools has recently provided education for the children of no more than five families!

incorporated by special act. But your committee see no foundation for such a suspicion.⁶⁷

The petitions were reported unfavorably.⁶⁸ While the tenor of this report throws the onus on those wishing to establish schools, the present writer regards the report as a clear indication of the failure of the legislators. A study of the record of legislation strongly supports the contention of the petitioners.

The legislative record respecting Orleans County is startling, to say the least, and merits exposition here. To begin with, it is admitted that the Orleans situation is extreme in its complexity. However, that in Orange County came close to rivalling it. And numerous others do, also, although on a less spectacular scale because they involved less widespread matters. Between 1812 and 1912 no less than twenty-four acts were discovered, all of which, in one way or another, are of concern to the public rights reserved in Orleans County for the benefit of grammar schools! The story commences with the incorporation of two schools—one at Brownington, the other at Craftsbury. The “funds arising from the lands granted for the use of County Grammar Schools in said county, shall be equally divided between said corporations.”⁶⁹ Such was the way in which the situation was initiated. The boards were each given powers to lease the lands, etc., but nothing was said to show which parcels were to be administered by which board. There was no saving clause for future legislative action.

This did not become effective because the towns failed to act, even though the time limit was extended. In 1820 a committee was established to locate *an* Orleans County Grammar School, and the same act provided its incorporation. This school was to have the benefit of all the lands in the county. The act, however, included complete saving clauses, allowing for redistribution both within the county, and outside it, to other schools.⁷⁰ The school was to be located by July 1, 1821, and there was a three-year limit for action by the town selected. Yet five years later

67. *Journal of the Senate*, 1841, Oct. Session, App., p. 36.

68. It is interesting to note that the Corinth school did receive special incorporation five years later! *Laws of Vermont, 1845-1848*, 1846, p. 53.

69. There is a suggestion in this act that pulling and hauling in the county was already rife. The act not only locates the two schools, but specifies that the county buildings should be located at Irasburgh. *Laws of Vermont, 1811-1814*, 1812, pp. 65-71.

70. *Ibid.*, 1819-1821, 1820, pp. 37-40.

an act authorized Ira Allen to call a first meeting of the board of trustees.⁷¹

In 1829 the Craftsbury Academy was incorporated, but there was no grant of public lands.⁷² However, in 1836 an act is found by which the lands were divided, town by town, between this school and "the county grammar school at Brownington."⁷³ (One can only suppose that the school provided for in the 1820 act had finally been located at the latter town.) The act included full provision for action by future legislatures.

A further redistribution took place twelve years later. Derby Academy appeared on the scene, and a three-way split was made of the lease lands.⁷⁴ That is, each school was allotted the lands in a list of towns. This did not last long. In 1852 the Orleans Liberal Institute was incorporated at Glover.⁷⁵ And in 1855 a new, general redistribution occurred.⁷⁶ This act had an interesting point in it. The Glover incorporation did not say anything about the public lands, but this next act went on the assumption that it was in control of some of them! (A careful search has revealed no intervening act.) The 1855 act also involved still another new school, the Barton Academy, and it introduced a new technique for distribution:

All income, rents and profits derived from the grammar school lands . . . shall hereafter be equally divided between the Orleans County Grammar School at Brownington, the Craftsbury Academy, the Derby Academy, the Orleans Liberal Institute at Glover, and the Barton Academy; and each of the four institutions first named shall hereafter pay to said Barton Academy one-fifth part of all such sums as they may receive . . . so that they shall all share alike.⁷⁷

It is easy to perceive that this left much to be desired from the administrative viewpoint.

Evidently, this was pointed out to the legislators. One finds another act on the same subject.⁷⁸ In fact, this second act carries the next serial

71. *Ibid.*, 1822-1826, 1825, p. 107.

72. *Ibid.*, 1827-1831, 1829, pp. 68-69.

73. *Ibid.*, 1835-1837, 1836, p. 149.

74. *Ibid.*, 1845-1848, 1848, pp. 16-17.

75. *Ibid.*, 1852-1854, 1852, pp. 129-130.

76. *Ibid.*, 1855-1856, 1855, pp. 70-71.

77. *Ibid.* This clause illustrates the fact that the legislature came to ignore completely the nomenclature of institutions in granting grammar school lands.

78. *Ibid.*, 1855-1856, 1855, pp. 71-73.

number after the one quoted above and was passed the same day. Here one discovers that the Barton school was dropped from consideration, the benefit being granted only to those at Brownington, Craftsbury, Derby and Glover. Furthermore, arrangements between these four were revised. Each was granted the lands in a specified list of towns. But then the following was provided:

Each of said corporations shall be allowed to retain, of the moneys received . . . one fourth . . . and no more; and in case at the end of one year . . . or any year thereafter, either of said corporations shall receive . . . more than one-fourth part of all the rents received by all of said corporations, the same shall be equalized among said corporations. . . .⁷⁹

Legal action was authorized for recovery of any such surplus.

The germ of further change was planted that same day by the incorporation of still another school—the Missisquoi Valley Academy.⁸⁰ And the change occurred two years later in another redistribution act.⁸¹ This involved a general overhauling as still other schools were now represented in the act. Besides those already named, there were the Westfield Grammar School and the Albany Academy.

The provisions of this act are somewhat involved. To begin with, "all income, rents and profits, derived from the grammar school lands . . . shall hereafter be equally divided between. . . ." Brownington, Craftsbury, Derby, Glover and Barton. Then, "the four institutions first named shall hereafter pay to. . . ." Barton, Westfield, Albany and Missisquoi "to each of them, one-eighth part . . . so that they shall share alike."⁸² (The Albany and Westfield schools had been incorporated just a few days previously.)⁸³ This act, like the first of those in 1855, failed to provide enforcement procedure.

However, the act was not long effective. In 1859 a new effort was made to untangle the problem.⁸⁴ This time the legislature tried a different scheme and purposed to transfer the responsibility for satisfying the schools to other shoulders. The act is relatively simple in form, but

79. *Ibid.*, p. 72.

80. *Ibid.*, 1855-1856, 1855, pp. 172-173.

81. *Ibid.*, 1857-1858, 1857, pp. 52-53.

82. The inclusion of Barton in the first list would appear to have been an error of engrossing or of printing. However, that is how the act appears in the *Laws. Ibid.*

83. *Ibid.*, 1857-1858, 1857, pp. 130-132.

84. *Ibid.*, 1859-1860, 1859, pp. 50-51.

how simple it might have been in operation is something else. It removed from the several boards of trustees the administration of the lands and gave the whole responsibility to the selectmen of the towns where the lands lay. They were then to pay over the rents and profits to whichever school should be determined on by a majority vote at the annual March town meeting. If the voters failed to make a choice, the choice was then the responsibility of the selectmen, by a majority of them. This at least has the merit of leaving local quarrels to be settled locally. This arrangement was modified in 1870.⁸⁵ Now the trustees were restored to authority of administration of those lands which lay in the towns in which the respective schools were located, the selectmen retaining authority over lands in the remaining towns of the county. A further change provided that any school could proceed in court against selectmen who failed, or had failed since 1859, to pay over the avails to any school. Such school, upon a recovery, should cover the costs of the action from that sum and then distribute the remainder equally among the schools in the county.

This may be regarded as the high point in the situation. The next action found in the *Laws* dealt with two schools in a contrary trend. The first was in Newport where the Newport Academy and Graded School District was established and was granted the benefit of the grammar school land in that town. The other saw the ending of the Barton school as an independent institution.⁸⁶ The act in question combined the Barton Academy and Barton school district number one into the Barton Academy and Graded School District. It essentially concluded the corporate life of the old Academy by establishing a new and differently formed board, by transferring to the new corporation the assets and liabilities of the old and by providing that the Barton selectmen should pay to the new corporation the avails, accrued and to come, from the grammar school land in that town.⁸⁷ The system established in the 1870 act broke down, further, by another act of the 1886 session.⁸⁸ By this,

85. *Ibid.*, 1870, pp. 519-522. In the meantime the act of incorporation of 1820 had been "revived." That is, the life of the corporation was extended. *Ibid.*, 1867, p. 101. *Supra*, p. 248.

86. *Ibid.*, 1874, pp. 152-157; *ibid.*, 1886, pp. 128-131. These acts are typical of the arrangements established by the legislature in the numerous instances where such action occurred.

87. This leaves open the question of why the selectmen should have been administering such land, under the terms of the 1870 act.

88. *Laws of Vermont*, 1886, p. 213.

the Craftsbury Academy was authorized to take charge of, and administer, the land in the town of Greensboro and keep the avails. This same school was later reorganized as to the composition of its board of trustees.⁸⁹

The year 1906 included an act which is exemplary of the sort of ill-defined matters which prevent positive conclusions about the lease lands, short of exhaustive research into individual situations.⁹⁰ It authorized a school bond issue for construction of a new building. The school concerned is the Barton Landing Academy and Graded School District. Whether this is the same school as that organized by the 1886 act is not clear. Geographically, it would seem improbable—the villages of Barton and Barton Landing are five miles apart. On the other hand, there is no earlier mention, legislatively, of a separate school at Barton Landing, but it would appear that a school had existed previously if they were to build a *new* schoolhouse. It may be a different school, or the school may have moved with a change in population distribution, or it may simply be a legislative vagary of nomenclature. The possibilities offer a variety of results as to disposition of that town's grammar school lands.

The final item in the story refers again to Brownington.⁹¹ That school was authorized and directed to convey land, and the Orange County Grammar School building thereon, to the selectmen of the town. This, together with the next section of the act, would indicate that the Brownington school had ceased operations. It directed disposition of the receipts of the sale in accordance with No. 46 of the Acts of 1908.⁹² The latter provided for disposition, by the selectmen, of income from grammar school lands which were not already granted to a particular school or use.

One distinguishing characteristic of the Orleans situation is that all of the acts provided a saving clause for future legislation, except the first one, which went by default. In many other instances the legislation either failed to do this, or was limited in its effect. (The Orleans story almost tempts one to conclude that things were perhaps better off—at least more stable—where the saving clause was neglected.) In fact, a study of the variety of such clauses would make a story almost as complex as that related above. The arrangements varied, in degree, from the

89. *Ibid.*, 1906, pp. 590-591.

90. *Ibid.*, 1906, pp. 592-593.

91. *Ibid.*, 1912, p. 487.

92. *Ibid.*, 1908, pp. 45-46.

one extreme set in the grant of the lands to Thetford Academy, where complete future legislative discretion was saved,⁹³ to the other extreme, to be found in the establishment of the Addison County Grammar School.⁹⁴ Here, there was not only no saving clause, but the property of the school was exempted from taxation "*forever*." Another interesting variation is that in some instances grammar school lands were granted at the time of incorporation, while in the case of other schools the grant followed after some lapse of time.

A further variant, or one might say, aberration, is first found to have occurred in 1823.⁹⁵ Here, the legislature granted the grammar school land in Jamaica to the use of the common schools in that town. This was clearly contrary to the terms of the charter reservation. Such action is not found to have occurred extensively until in the 1860's, and later, when there were a number of instances, an example being the case of Northfield.⁹⁶ Later in that decade, and in the 1870's and 1880's, the custom changed and the pattern became general, which was illustrated in the case of Barton.⁹⁷ That is, the move to endow the public schools with the benefit of the grammar school lands was accomplished by a corporate junction of a previously existing school corporation with a public school district. The change in technique may have occurred after some question was raised as to the constitutionality of giving such lands to the common, or graded schools, as well it might have been in view of the court's close adherence to the letter of the wording of charters.⁹⁸

In any case, whereas the period from the 1840's to the 1860's witnessed the great increase in privately incorporated secondary schools, from the 1860's and 1870's on the movement was under way toward public school development. In 1874 the State Superintendent of Education was empowered to require "correct answers to statistical inquiries" addressed to the academies and grammar schools.⁹⁹ And by 1902 one finds provision for general establishment of public high schools, with a

93. *Ibid.*, 1819-1821, 1820, pp. 161-162.

94. *Ibid.*, 1796-1798, 1797, pp. 36-38.

95. *Ibid.*, 1822-1826, 1823, p. 10.

96. *Ibid.*, 1882, p. 41.

97. *Supra*, p. 251.

98. It will be recalled that *White v. Fuller*, 38 Vt. 193 (1865), was decided in 1865. This opinion, as has been remarked, was rich in *dictum* respecting the public lands and has since been influential. The grammar school right figured in the action.

99. *Laws of Vermont*, 1874, pp. 58-62.

requirement that they be established in all towns of more than 2500 population.¹⁰⁰ Clearly, the heyday of the county grammar school was ended.

But it cannot be said that land situations created in that era had ended, as well. The act of 1908, discussed above,¹⁰¹ and revisions of it since then, have undertaken to set up a modernized scheme of administration of the lands of the grammar school right by making it a function of the local public authorities, but much debris inevitably remains from those grants made to schools where the school corporation, at least, still exists to maintain its claim to the right granted long ago. Many other things could be written respecting this topic of legislation. The main theme has been demonstrated—the legislatures of the past cannot be proud of the discharge of their responsibility for disposal of the grammar school lands.

TOWN SCHOOLS

The acts compiled here on town school matters by no means exhaust the field, as may be found in the *Laws*.¹⁰² Among those acts listed are some covering such matters as school district organization, changes in district boundaries, finances, attendance, terms, etc. These, however, are only representative selections of the whole of the legislation which was enacted. Some of the mass included general school acts and some applied to local situations. As with the grammar schools, the legislative record is tremendous on the topic of town schools. In fact, a full compilation for the latter would completely overshadow the dimensions of the grammar school legislation.

One thing should be seen in this connection, however: here, there is a higher proportion of acts which were designed to apply more or less generally (in contrast to acts of special legislation) than was found in the case of the grammar schools. To this extent, the legislature, in regard to this topic, can be credited with an attempt to develop policy. The effort was vitiated in two ways, however. One was that, concurrently with the acts designed to create general policy, many special acts were being passed, dealing exceptionally with individual localities. The other adverse influence was the almost constant fluctuation in the policy itself. Much of the legislative backing and filling was due to pressures from

100. *Ibid.*, 1902, pp. 38-40.

101. *Supra*, p. 252.

102. App. B, sec. 20.

the towns themselves, some of this being expressed through the town representatives in the General Assembly. But this is a slight excuse for the failure of the legislature to assume a real leadership in policy development.

And the end is not yet. The criticism just laid, is valid even now. At the present time, for example, there is ferment and milling around with respect to the provisions for state aid to the towns, and the relationship of this to the possibility of encouraging consolidation of small school districts. Those acts selected for compilation are only so many as were thought adequate to present the nature of the situation. In a study of any particular town school situation, in relation to the use of lease land income, a further examination of the legislation would be necessary. But in the case of this topic, the legislative indices and the titles of acts are reasonably reliable and useful. All acts encountered which contained specific provisions of any sort respecting the lease lands are included here.

As early as the 1830's one finds a great quantity of variegated legislation respecting schools, and it is not too censorious to say that as early as that, and even before then, the whole business had become a mess. Vermonters were having a terrible time supporting and administering common schools. Poor attendance, inadequate school terms, incessant quarrels over money matters, and so on, mark the entire period up to 1880, at least. Law after law was passed attempting to create some sort of workable system and trying to force the towns to support their schools adequately.¹⁰³

In this latter respect, one finds resort to a device which also figured in the acts distributing lease land benefits to the grammar schools. The method was to provide that any school failing to maintain a prescribed minimum term of school should suffer exclusion in the distribution of funds. In at least one case, however, the legislature tried more extreme measures. One act listed in the appendix was so drastic as to establish procedure by which grand juries, annually, were required to inquire into the school finances of each town.¹⁰⁴ If it were found that legislation on the levy of the school tax, or the proper expenditure of school revenue, had not been complied with, the whole town was to be indicted and

103. This is the sort of matter which supports the speculation indulged in earlier that there was not a real *effective* early interest in religious and educational activity, to the probable detriment of the lease lands. *Supra*, pp. 73-74.

104. *Laws of Vermont, 1819-1821, 1821*, pp. 90-91.

tried in the county court! Penalty provided was fifty-percent of what the inhabitants would have paid on the school tax if the latter had been complied with. The penalty sum was to go to the county treasurer for county use. The act further provided requirements, with penalties, for proper action by clerks of school districts.

The acts listed are sufficient to cover adequately the picture of the principal types of local organization of education which have appeared at one time or another. The earliest arrangement was the creation of school districts which were the ultimate in local government organization—distinctly “neighborhood” affairs. They had no necessary relation to town lines. It was, in fact, normal for towns to contain several districts and, conversely, districts might cross town lines.¹⁰⁵

An act of 1866 established the West Rutland Centre School.¹⁰⁶ This ushered in the so-called “incorporated school,” as distinct from the ordinary school district for conduct of common schools. The following year saw authorization of central districts for administration of “higher” (*i.e.*, secondary) education.¹⁰⁷ Here is the initial move of consequence toward the public high school system. And during this same period provision was made for organization of “graded school districts,” which were essentially unions of the older districts. A little later, in 1870, the so-called “town school system” was authorized.¹⁰⁸ Under this plan a town could eliminate all its local districts and administer its schools on a town-wide basis.

These are the patterns of importance (with the addition of that described under the preceding topic whereby there was a junction of a private academy with a public graded school), and they all are represented even today. Localism had sufficient influence to include provisos in all of the new plans whereby they were voluntary in effect and those places so wishing could retain the older plans.¹⁰⁹

The list likewise contains all of the various acts designed to provide administration of education for children living in unorganized areas. In view of the dominant place of the town in Vermont school affairs,

105. As early as 1847 there were 2616 school districts in existence. Vermont, State Superintendent of Common Schools, *Report*, 1848 (St. Albans, 1848), p. 10.

106. *Laws of Vermont*, 1866, pp. 101-103.

107. *Ibid.*, 1867, pp. 22-24.

108. *Ibid.*, 1870, pp. 38-44.

109. The act of 1888 compiles most of the existing school laws in a comprehensive way and makes a few changes. It covers most of the picture up to that date and is a useful summary reference. *Ibid.*, 1888, pp. 9-52.

this matter presented a special problem. The acts referred to also, of course, cover those provisions enacted respecting the administration of lease lands, and the income therefrom, in such places. Briefly, the basic solution was to set up a plan whereby adjacent towns would educate such children on payment of certain fees.¹¹⁰ (This plan has also been available as between organized towns in cases where one town was not justified in maintaining a school or where geographic convenience indicated that the children in some parts of a town could be educated more inexpensively in the adjacent town.)

Some of the legislation, pertaining to the lease lands, deserves attention. One finds two sharp contrasts, which serve, too, to characterize land subsidies, as different from money subsidies. One contrast is seen in the more or less constant effort to assure equalization of benefits received by school districts. Whenever there has been any distribution of funds, whether from the town, or the state, to school districts, one or another device, such as a per pupil ratio, has been used to this end. The one source of revenue in which there has been a different tendency has been the avails of the lease lands. It is true that some legislation has required the selectmen to divide such avails among schools. But this could only be partially successful because of various lands being committed to particular schools.

Another aspect of this rigidity is found in the cases of town lines being changed with a consequent effect on school districts. In such acts there will be sufficient provision made for redistribution of property, other assets, and liabilities to adjust to the new jurisdictional relationships. But not so for lease land income involved.

Here the doctrine of executed grants has prevailed, in conjunction with the doctrine that the beneficiaries of the trust are the inhabitants as they were organized at the time of the founding of the trust, and the further doctrine that the lease lands constitute non-governmental property.¹¹¹ In such cases the original town retains the benefit, and those people of the town who find themselves translated into a new jurisdiction are without the benefit. A few acts have authorized a distribution of the avails, but only on a basis of the towns approving the change. In

110. There were, however, cases in which it was provided that school districts might be set up in the unorganized area, under the administration of the county treasurer.

111. See the opinions in the Montpelier cases, 27 Vt. 704 (1854); 29 Vt. 12 (1856). *Supra*, pp. 149-151.

fact, the problem of dividing the avails of lease lands has occupied some attention and has been the subject of various attempted solutions from the first.¹¹² Even yet, in the twentieth century the effort still continues. The act of 1908, to which reference has otherwise been made, is such an attempt.¹¹³ And as was noted earlier, it in turn has undergone modifications.

In recent years much of the legislation compiled here has dealt with local educational fiscal administration and fiscal reporting. It cannot be said to have been successful. Otherwise much of the data which could have served this study would have been available. The condition of town reports, as will be described later, supports this conclusion.¹¹⁴

THE "GOSPEL" RIGHT

Somewhat surprisingly, there were not a great number of laws passed dealing with the "Gospel" right.¹¹⁵ This is thought to be surprising because of the proliferation of sects during the nineteenth century and the intense feeling which sectarianism engendered and which could well have been reflected in the deportment of the legislators, as were the pressures respecting town school affairs.

The eighteenth century legislation unmistakably related the parish and town and made religious matters, at the least, a quasi-town function, justifying Judge Moulton's assertion that the administration of religious lands is a legitimate town function in Vermont.¹¹⁶ It provided that proposed religious activities, such as the building of a house of worship, settlement of a minister, etc., should be accomplished through action in a duly warned town meeting. It authorized the laying and collecting of a tax, just as in the case of other taxes. Later acts allowed for variations of religious belief and provided escape from such taxes by those not

112. *Laws of the State of Vermont, Revised* (1797), pp. 493-499.

113. *Supra*, p. 254. This act is significant, too, as a full-fledged final recognition of the triumph of the public high school over the private academy. It is in this act that one sees a complete acceptance of the former in the terms of the provisions for distribution of avails of grammar school lands. It constitutes a final answer to the issue of town versus "county" administration of secondary education.

114. *Infra*, pp. 295-300.

115. App. B, sec. 21. These are the shares variously referred to as for "the support of the Gospel," "the social worship of God," and "the support of the ministry."

116. *Jones v. Vermont Asbestos Corp., et al.*, 108 Vt. 79 (1936). *Supra*, p. 132. n. 148.

adhering to the majority church.¹¹⁷ A few years later the development of religious heterogeneity was accommodated by legal recognition of voluntary religious associations which were authorized to carry on all necessary functions, including property holding, but were not incorporated, and were distinctly assumed to be minority groups in that their procedure was to be otherwise than by the town meeting method.¹¹⁸

The first act in which there was detailed specification for administration of the Gospel lands was passed in 1798.¹¹⁹ The act directed the selectmen to administer such lands as were reserved to this right "*and still remaining to such use.*"¹²⁰ The quoted phrase is unexplained in the records, and the questions it raises go unanswered—why the legislature should have assumed that some Gospel lands might have been "lost." There is the possibility that the legislators were thinking in terms of the New Hampshire practice.¹²¹ Or they may simply have accepted the idea that the turmoil of land matters would have resulted in some losses. (The phrase recurs in a later act on the same subject.)¹²² The act authorized leases up to terms of fifteen years. The avails were to be distributed among the religious societies in the town proportionally to the numbers in the respective memberships. If no religious society were formed, the avails were to be loaned at interest until such time as a society should exist.

The authorized term for leases was changed in 1803 so that the selectmen could make leases for any term of time as they deemed best.¹²³ The proportional method of distribution of avails continued until 1868, since which time the law has specified that the avails shall be divided equally between the religious societies.¹²⁴ Two limiting provisions were later established by the legislature. The first was that, to be eligible in the distribution, a society must hold meetings on at least one-fourth of the Sundays in the year.¹²⁵ The other was a detailed effort to describe and define what legally constituted a society, stating that only those thus

117. See Slade, *State Papers*, pp. 472-473, Oct. Session, 1783.

118. *Laws of the State of Vermont, Revised* (1797), pp. 474-479.

119. *Laws of Vermont*, 1798, pp. 17-19.

120. Italics mine.

121. See Baptist Society in Wilton v. Town of Wilton, 2 N. H. 508 (1822). *Supra*, pp. 135-138.

122. *Laws of Vermont, 1815-1818*, 1818, pp. 84-85.

123. *Ibid.*, 1803, Oct. Session, pp. 82-83.

124. *Ibid.*, 1868, p. 32.

125. *Ibid.*, 1869, p. 39.

qualifying should receive the avails.¹²⁶ Then, in 1878, a further change in administration was made.¹²⁷ After this, if there were no religious society to receive the avails, the income could be used variously, as determined in the town meeting, to pay for preaching, for the support of schools, or for the improvement and care of burial grounds.

As to Gospel lands in unorganized areas, no enactment was found prior to 1852 establishing any procedure or machinery of administration. This was the general act, referred to elsewhere, which covered this right as well as those for the first settled minister, the glebe, and the support of schools.¹²⁸ The county treasurer was made responsible, and the avails from all four of the shares were to go to the support of schools. The act specified that its provisions were limited to such time as such areas should become organized. In consideration of the fact that the long period before this date saw important areas not yet organized, it is not too difficult to imagine that the public rights could have suffered at the hands of speculators and squatters.

One final point is to be noticed respecting this topic. There are far fewer acts incorporating particular church groups than one might expect in the face of the many churches which existed. After 1870 there is an increase in such legislation but not to any level that would be supposed. This is due to the effects of two legislative conditions. One is the early recognition of voluntary associations. The other is that some of the large denominations incorporated on a state-wide basis, through the medium of their annual conferences, or otherwise, and these corporations functioned as "holding societies" for the individual churches.

THE GLEBE

Although the glebe was not accorded separate treatment in the analysis of the work of the court, it merits a section of its own in the compilation of laws because of the distinctive characteristics of those laws and the results thereof.¹²⁹ It is true that the principal acts respecting this right cover both that and the S. P. G. right, but the effect of the decisions of the United States Supreme Court resulted in the two rights going different ways.¹³⁰

126. *Ibid.*, 1874, pp. 57-58; *General Statutes* (2nd ed., 1870), ch. 90, sec. 2.

127. *Laws of Vermont*, 1878, p. 104.

128. *Ibid.*, 1852-1854, 1852, p. 63.

129. App. B, sec. 22.

130. See *Town of Pawlet v. Daniel Clark and others*, 9 Cranch 292 (1815), and *S. P. G. v. Town of New Haven and Wheeler*, 8 Wheaton 464 (1823).

It was noted, in the discussion of the S. P. G. legislation,¹³¹ that the first act—that of 1787—authorizing the selectmen to administer that and the glebe right did not provide for any disposition of the avails. One further aspect of this law is of some interest. It would appear that the legislature had not by then generated its later extreme antagonism toward the Episcopal Church. The following section appears in the act:

Provided . . . that nothing contained in this act shall extend so far as to prevent any Episcopal Ministers, during the time of their ministry, that now are, or hereafter may be, in possession of any glebe, lot or right, or actually officiating in said town, where the land lies, and is an ordained Minister of the Episcopal Church, from having the management of such lots, and the avails arising therefrom, during the present septenary.¹³²

This is a far cry from the terms of the acts of confiscation of 1794 and 1805 and the intense effort made in the courts thereafter. It will be recalled that the determining suit—*Pawlet v. Clark*¹³³—arose in a town where the situation was just that protected by the clause quoted above.

Another interesting legislative aspect of the glebe is the matter of the 1794 confiscation having been repealed in 1799. Just why this should have occurred is not clear.¹³⁴ In any case, Judge Story found it, and the subsequent 1805 confiscation, ineffective. Inasmuch as the court accepted the validity of confiscation, the 1794 act constituted an executed grant which the legislature could not revoke. Thus, the requirement in that act that the avails should go to religious purposes is the effective directive rather than the later one devoting the avails to the support of schools.¹³⁵ Vermonters have exhibited their customary pragmatism in the matter. It seems that in some towns the glebe benefits religion, in others education. As to unorganized places, as has been seen above, the schools benefit.

131. *Supra*, pp. 245-246.

132. *Laws of Vermont*, 1787, Oct. Session, pp. 7-8.

133. 9 Cranch 292 (1815).

134. However, it is probable that the 1799 repealer was passed by the legislature as a response to unfavorable judicial action respecting the confiscation. The selectmen of Manchester attempted to carry out the provisions of the 1794 act in litigation against Daniel Barber. In 1798 the United States Circuit Court, in an unreported case, ruled against the selectmen and held the 1794 act to be unconstitutional and void. No mention of this is made in the 1799 repealer. See *infra*, p. 302, n. 120.

135. Judge Story considered the 1805 act as simply broadening the scope of authority of the towns as trustees.

Little else need be said. Later acts affecting the glebe are simply general acts affecting all classes of lease lands, such as the listers' laws, other than several special acts involving individual town land situations.

FIRST SETTLED MINISTER RIGHT

There is not a great deal that need be said respecting legislation dealing with the right for the first settled minister¹³⁶—most of it has already been accounted for in the discussion of tax exemption, the Gospel right and some other topics. There has been very little legislation dealing particularly with this right; it has for the most part simply been included in the provisions of acts applying to all, or several of, the groups of lease lands, an example being the 1852 act respecting the lease lands in unorganized places. The legislative relationship is particularly close with the Gospel right; one finds either that the minister right was taken up by a settled minister and essentially disappeared as sequestered land, or, in the remaining towns, that it has been subjected to the same provisions as those established for the Gospel right.

There are a few distinctive legislative conditions to be observed, however. For example, where the selectmen, or the county treasurer for unorganized areas, were given authority to lease public lands, it was customary to set a five-year term for leases of this right, whereas the term for the other rights would be without limit. An important special treatment of this right referred to tax exemption. It is of sufficient consequence to be quoted:

. . . the right granted by charter to the first settled minister in any town in this state, shall after such settlement, be considered remaining to a pious use, and the said right, and every part thereof, shall be free from taxes so long as it continues the property of such minister, and he has the pastoral charge of the church and congregation, over which he was settled.¹³⁷

This is not only of interest respecting the matter of tax exemption. It is also the nearest approach to legislation which might be thought of as authorizing the practice of this right going in fee simple to the minister. Actually, the practice had existed before this act, and it simply took notice of, and accepted, an established customary rule. Among the acts compiled here are a number referring to matters in particular towns.

136. App. B, sec. 23.

137. *Laws of Vermont, 1811-1814*, 1814, pp. 82-83, sec. 2. The first section of the act declared general exemption for all the public lands.

For the most part, they authorize the town to use the right for the benefit of the schools until such time as a minister shall be settled.¹³⁸

Other aspects of the history of the right for the first settled minister are dealt with later in the consideration of the administration of the public lands.¹³⁹

GENERAL COMMENTS

The analysis which has been made of the pertinent legislation serves, it is believed, to support and justify the view which has been expressed, that the legislature has failed to provide laws, either toward the establishing of a sound operating policy or toward requiring adequate administration, by which the public lands granted in the town charters could be assured of furthering the public policy for which they were designed as instruments. Or, to put it in another way, the legislation has been inadequate to assure that the sequestration of this great acreage should contribute to the welfare of the people of the state.

A final word is in order respecting the early period. One finds various acts making changes in existing legislative provisions, which changes are of very questionable validity. Examples, which came under judicial scrutiny, were the 1799 and 1805 acts respecting confiscation of the glebe. It will be recalled that Judge Story asserted them to be ineffective to change the grant to the towns made in the 1794 act.¹⁴⁰ There were two outstanding occasions in which such legislative overhauling was indulged in. Both in 1787 and 1797 there was a general declaration that all previous legislation (with specified exceptions) was repealed, and new laws were written as replacements. In the present writer's view, some, at least, of such revision would have met judicial objection as affecting vested rights, if the courts had then been in a position to police the matter. At any rate, this situation needs to be known as it most certainly could contribute to early confusions respecting the handling of the lease lands.

138. An exceptional one was that dealing with the right in Ripton. Here the right was declared to have become inoperative because of no ministerial settlement, and the land was granted to the town for the use of the schools. *Ibid.*, 1835-1837, 1835, pp. 147-148.

139. *Infra*, pp. 303-309.

140. *Town of Pawlet v. Daniel Clark and others*, 9 Cranch 292 (1815).

Chapter VII

ADMINISTRATION OF THE LEASE LANDS

The subject matter of this chapter was initially planned to have been the principal aspect of the study of the lease lands.¹ As it stands, the chapter is relatively brief in comparison with what was planned, and the material in it is relatively fragmentary. This condition is to be taken as symptomatic of the condition of administration of the lease lands. The chapter in its present form, in effect constitutes a demonstration of the actual situation prevailing respecting its subject matter. Nevertheless, it was thought to be worthwhile, for an introductory study, to proceed so far as the available material permits. Thereby, administrative conditions of the various classes of lease lands are made that much clearer, and it will offer an advanced point of departure for any more extensive study. It can, in other words, eliminate the need, in future investigations, of much of the trial and error procedure by which the present research had to be defined.

The different groups of lease lands are to be considered separately here. The procedure will be to study them in an order corresponding to a descending scale, or degree, of administrative centralization. On this basis, the college right, administered by the University of Vermont will take precedence, followed by the S. P. G. right, administered by the Episcopal Diocese of Vermont. These two are the most wide-spread of the rights. Each of them embraces nearly a half of the towns in the state. The right for the county grammar school stands next in order. In this case, the lands extend to a maximum area of one county for any given administrative control. The several rights administered by the towns individually follow, and the survey of groups of lease lands will be concluded by the right for the first settled minister.

A speculation developed as to whether the larger, more centralized operations would demonstrate any difference in quality of administra-

1. See *supra*, pp. 3-7, for recital of development of the study.

tion from that of the more decentralized groups of lands. It would seem, now, that some degree of difference can be discerned.²

Certain it is that the more centralized administrations provided more in the way of records for study. This, of course, is partly due to the fact that larger acreage would automatically lead to more records and partly to the fact of those records being accumulated in one place. (In other words, the college rights for, say, fifty towns should all be recorded at the University, whereas the Gospel rights in fifty towns would be recorded in fifty different places.) But the difference goes far beyond these factors.

Another distinction was in the extent to which the writer could obtain relatively clear and correct verbal information from those connected with the lands. The more decentralized the administration, the more vague and inaccurate were the prevailing impressions, not only respecting the administration of the lands, but as regards the very nature of the lease lands.

A third interesting phenomenon is that the farther down the scale of centralization one proceeds, the more numerous are the instances of litigation, at least as to those reaching the Supreme Court.

All this is not to say that the lease land administrations conducted by the University and the Diocese are to be complimented. An example will serve to demonstrate the distinctions intended. In no case has it been possible, within the limits of this research project, to ascertain with precision how much income is derived from the respective groups of lease lands.³ But in the case of the University and Diocese approximations, which give the appearance of being fairly close, are possible; whereas, with the others no estimate, however loose, can safely be made.

THE UNIVERSITY LANDS

The University has by far the most business-like establishment for the administration of its lands. (Closer acquaintance with it leads one to conclude that this is a fairly recent development.) The present arrangement was set up by Mr. H. M. MacFarland and further refined by Pro-

2. To one of a skeptical turn of mind, the difference might be described as that between "bad" and "worse."

3. The Addison County Grammar School records may be regarded as something of an exception. One can discover the amounts received each year. It is not, however, a full-fledged exception because of such practices as carry-overs of past due rents.

fessor A. D. Butterfield, who worked with Mr. MacFarland from 1927 until the latter's death in 1942 and then succeeded to the responsibility. At present the University Land Office occupies a spacious, well-equipped room in the institution's administration building.⁴ It is staffed by Professor Butterfield, as Land Officer, with such stenographic assistance as he needs. This was the last of the groups to be studied in this research, and the writer experienced a sense of gratification at this scene, in contrast to the physical conditions encountered in contacting other land administrations. Professor Butterfield offered every assistance he could and made available whatever was desired, with the amiable approval of the University's president.

However, no long time passed before it became plain that the appearance to some extent belied the fact. The land officer is interested, well-intentioned and intelligent. But he is not in a position to do a thorough job. He is ambitious to proceed with the cleaning-up and further development of the land administration and expressed deep satisfaction that the present study had been undertaken. But he has had too little time to devote to the lands. At the time of this research, he was fully occupied with the intricacies of the task of administering veterans' affairs at the University. Before that, other similar chores, such as National Youth Administration affairs, have been given him. So that, in actuality, one cannot but conclude that the administration of the University's lease lands has been at something of a standstill.

During the course of the analysis of the Vermont court's relation to the lease lands, the occasional nature of the University's efforts with its lands was mentioned. The records in the Land Office substantiate this characterization. They are spotty. There were few early records of a systematic sort. There are several file boxes containing old, as well as more recent, leases. These are not altogether properly sorted or arranged, and it would be tiresome to locate particular lease forms if there were a need to do so. In fact, the collection of leases is anything but complete. It has been remarked that no copy could be found of the 1804 report to the legislature respecting the lease lands. Professor Butterfield appealed to the president's secretary, who searched through the executive files for it, without success.⁵

4. This office is responsible not alone for the college lease lands. It also administers the other extensive land holdings of the University.

5. It seems to have been available a quarter century ago because in Mr. MacFarland's own report he purportedly quotes from it, extracts of which quotation will presently be presented herein.

There is evidence of a period of effort during the first half of the nineteenth century. A note-book, done in pencil, is an attempted compilation of the University's rights, by a recapitulation of the relevant town charter provisions. The note-book is titled, "Official transcript from the Records of the Charters of Lands granted under the Authority of the State of Vermont." The cover page carries the following inscription:

Showing the several townships in this State, in which Lands are reserved for the use and benefit of the University of Vermont and the quantity of Lands thus reserved in each township or grant respectively.^[6] Taken from the Records aforesaid, remaining in the Office of the Secretary of State at Montpelier, the 14th Day of October, 1834.

One can assume that the note-book was prepared in connection with some effort by the University to secure college rights not already under its control. At the end, immediately following the data for the towns, is a certificate signed by Timothy Merrill, Secretary of State: "I hereby certify that lands are reserved for the use of a seminary or college in the charters of the towns following, viz;—." Then follows the list of towns preceding the certificate in the note-book. It closes with the statement: "The quantity of lands reserved in the foregoing towns is as described in the foregoing pages."⁷ Pencil figures below this indicate a calculation of a total of ninety-five towns listed. This is worth noticing because Mr. MacFarland reported the total of grants to be ninety. The latter figure is also used in his quotation of the report of the legislative committee to which had been referred the 1804 report of the trustees of the University.

There are two records, referred to as Rent Rolls, 1 and 2, which were utilized, during the nineteenth century, as records for the collection of rents. Rent Roll 1 is well named because it is literally a very long continuous stretch of paper which is stored in a roll. Rent Roll 2 is a large ledger dated "1834-1867" and contains accounts of University land rentals.⁸ It is impossible in most cases to distinguish between charter lands and other lands; some charter lands are labelled "College Rights."

6. At the end of the volume there are arithmetrical work notes pertaining to a number of the towns described, by which it appears that the average land per town for the college right would be well above 300 acres.

7. Pp. 55-56.

8. There is also an account book which can be regarded as succeeding Rent Roll 2. It covers the period 1868-1913.

The volume does not seem to contain a record of any un-leased parcels during those dates, except as leases were granted from time to time after 1834. The records therein permit of the generalization that, by and large, rents were collected pretty regularly, for those holdings which were under lease, during that period of time.

The coincidence of dates should not be overlooked. The note-book, certified by the Secretary of State, is dated 1834, and this volume of rent records commences then. One can presume that someone at that point developed an interest in sorting things out, similarly to the twentieth century effort made by Mr. MacFarland.

Contemporaneously, there is a series of four loose-leaf, leather bound volumes, specially prepared, and containing elaborate forms, also specially prepared, for the land records. The volumes are titled "Lease Lands: U. V. M. & S. A. C."⁹ This title is misleading because the data within the volumes includes both the lands granted to the college right in the town charters and other holdings of the University, such as lands received by bequest.¹⁰

Mr. H. M. MacFarland, of Hyde Park, Vermont, was an attorney and a trustee, for some years, of the University. He became interested in the institution's land situation and decided to devote his time to it. The Board of Trustees approved his plan and authorized it, together with funds to cover the expenses.¹¹ Besides his own work, he utilized the services of two members of the engineering faculty.

He seems to have had an ambition to accomplish a complete overhaul and to spare no effort in the process. His program contemplated a visit to every town in which University lands should properly be found, an inspection of the pertinent land records in the town, and a field inspection of the land itself whenever this seemed advisable. His printed forms are devised to present all possible data of interest respecting each separate parcel of land, even to sociological data on the tenants. A high

9. Hereafter cited as "Lease Lands." Vol. I contains Mr. MacFarland's report, with subtitles, "Foreward," "Commentary on Tabulation," "Specific Data," and "Conclusion."

10. This is an instance of practices, spoken of earlier, by which confusions arise. The one group would properly be tax exempt; whereas, much of the other holdings are subject to taxation.

11. On p. 64 of vol. I of "Lease Lands," he says:

The general scope of the inquiry was determined upon in consultation with President Bailey at various times during the early part of 1922, and it has been carried on under his advice and with the approval of members of the Executive Committee of the Board of Trustees and the Board of Trustees as a whole since.

proportion of the reports for the various towns are two-fold, one version being from his visit, the other being the report of visits by the two faculty members assisting him. He devoted his available time to the task for years.¹² Yet, at his death the job was incomplete. And Professor Butterfield had, so far, not been able to complete it.

Numerous of the reports of the towns which were visited are not satisfactory to one using the reports, nor were they to Mr. MacFarland, as indicated by his remarks in the "Foreword," at page 7, volume I: "This tabulation is an attempt to show the 'lease land' holdings of the University in perspective. It is an epitome, more or less accurate, but in the nature of things, I know not absolutely so." With reference to his quotation from the 1804 report, in which, according to Mr. MacFarland, it had been asserted to be " 'impossible to ascertain at present with any precision the exact quantity of land so reserved,' " he says, at page 12, volume I: "As was the condition at the time the preceding reports were made, so now there are college rights, not many, but some, that have never been located." And at page 14, volume I:

An added Century has not changed the situation except to make uncertainty even more uncertain. The sources of information are the same but an intervening hundred years and more has not added to clearness of vision with which to read this information understandingly.^[13] Add to this the fact that the records in many towns are either wholly lacking or bad per se and so unreliable While I have not the presumption to think the following tabulation correct in every particular, which, considering . . . the sources of information at hand, sometimes meagre and frequently conflicting

There is only one conclusion possible. The University has clearly been negligent in administering its lands. Else, Mr. MacFarland's program would have been unnecessary, or, at the least, it could have been completed more readily. Evidently, the institution's attitude has not changed materially. Mr. MacFarland's individual reports on towns con-

12. Prof. Butterfield stated that for some years prior to his death he did nothing much else but this work.

13. In Mr. MacFarland's quotation of the 1804 report, the trustees are purported to have said, at that time:

'This difficulty is further increased from the imperfection of the grants themselves, some of which are so vaguely expressed as to render it doubtful if the lands can be holden by such tenure. In many towns by neglect or design of the proprietors, the College lands have not been severed or located. . . .'

"Lease Lands," I, 11.

tain numerous recommendations to the trustees. Wherever he found a parcel of land in vague or ambiguous legal status, he urged that action be initiated to clear it up and assure its preservation for the University's benefit. The writer asked a responsible officer of the University what had been done and was informed that, so far as anyone knew, the trustees have never taken the time to consider the reports. It is now twenty years since the first of them was submitted.

No precise information was obtained by which to state the annual income from the lands of the college rights. This is basically because it varies somewhat, depending on the extent to which tenants, in any given year, happen to remit the rent, and the energy with which the University happens, in any given year, to force remittances. Furthermore, lease lands are not so recorded that totals of income are available, short of an exhaustive analysis of accounting records.¹⁴ The legislature's Commission on Forest Taxation estimated that the University's total rent is \$3,100.¹⁵ This appears to the writer to be a close approximation. The commission's report went on to say, ". . . but a large share of this sum is absorbed in bad debts and cost of collection."¹⁶ The figure given would indicate a development, at some time or other, of the University's land administration. Mr. MacFarland's quotation of the 1804 report is to the effect that at that time the total rents amounted to \$1,048.79, of which there was then due \$191.00.

Mr. MacFarland prepared a summary tabulation of the data detailed by towns:

. . . the following table is submitted as giving an approximately correct summary of lands now held by the University of Vermont, coming to it by charter from the State. . . .¹⁷

Total Acreage	Sold and Lost	Not Sold	Rented	Annual Rental	Not Rented	Not Ac- counted For
28188	215+	1420	26553	3099.14	1418+	785

14. Billing and collections are the responsibility of the Treasurer's office. A question is in order as to how effectively this is accomplished and how well liaison is maintained with the Land Office. Mr. MacFarland's reports not infrequently include information, derived from his interviews with town officials, respecting changes of occupancy of which the University was unaware. In the town of Braintree, for example, he was informed that a lumber company had "owned and occupied" two of the college lots for some three years past during which time they had thoroughly stripped "quite a good stand of second growth." *Ibid.*, I, 198-202.

15. *Forest Taxation*, p. 8.

16. The report stated that the University "was originally granted 25,707 acres of which the records on almost twenty percent have been lost." *Ibid.*

17. "Lease Lands," I, 15. This summary is dated April 20, 1928.

With respect to the item "Sold and Lost," he explains:

. . . there were four ultra vires sales of 'chartered lands,' . . .
viz:—

Town	Acreage
Chittenden	5¾
Fayston	100
Newport	10
Victory	100
	<hr/>
Total	215¾

. . . though sales were ultra vires, they were, I think, sanctioned in every case by the Trustees, and so these sales should not and I think will not be questioned.¹⁸

His explanation of the tabulation continues:

By the classification 'not accounted for' is meant those lands of which I have thus far only hazy and quite indefinite information, found in my search in the Town Clerks Offices, but sufficient, I think to warrant . . . investigation In many cases I anticipate the decision on investigations will be to 'forget it,' for in gathering this data over nearly all parts of the State, I have given the benefit of the doubt to writing down¹⁹

This assertion is substantiated by inspection of the reports on each town in the first three volumes. Much of the acreage which he includes as accounted for can only be so classified by the most flexible interpretation of the situation. His report from Bethel is presented in full in Appendix D to show the degree of difficulties encountered. It should be regarded as anything but exceptional, although perhaps extreme. It would only burden this introductory study to multiply the available examples.

He later presents remarks on the University leases:

In most leases, though not in all, there is found a reservation to the University of the stumpage on a specified certain number of acres, usually fifteen or twenty, on which the lessee shall commit no 'strip or waste' In some few instances the University for a consideration has sold the stumpage entire and the right to remove same, and in a few others it has rented the land for a single present payment in money and a further rent of one

18. *Ibid.*, I, 38.

19. *Ibid.*, I, 43-44.

barley corn a year if demanded,^[20] but both of these courses have been unusual and in the so-called Judevine cases have been held by the Supreme Court to be contrary to any powers vested in the University or the Trustees Most of these leases were made many years ago and this stumpage reservation, I am sorry to say, in very many cases has become practically a dead letter and of little worth as such. There are several reasons for this: First, when the leases were made stumpage was of small if any value, and being of little worth, was not looked after; Second, the expense attendant upon following the matter to any result would have been considerable and so, in the face of more urgent calls for money, investigation and checking up of stumpage was passed; and third, 'doing nothing' became a habit, a precedent easy to follow Such inaction on the part of the University long continued brought about a feeling on the part of the lessee and sub-lessee that this reservation clause in the lease really meant nothing, that it was mere surplusage, and so by reason of long continued non-enforcement today in by far the larger number of cases the reserved stumpage is not to be found, it having been cut years ago by lessees long since dead.²¹

Another aspect of the land situation is well defined by his remarks respecting correct acreage:

It will be seen from references to the quadrennial appraisals found in the various towns referred to in the pages following that there is often and, in fact, generally, a variation in the Listers' return of the number of acres of College lands and the rent thereon, and the number of acres which these lots contain, going back to the original surveys thereof, and the rent which the leases disclose as the amounts due the University.

This shows how inaccurate Listers' returns oftentimes are, assuming that the records of the University are correct, and while it perhaps avails nothing to refer thereto here, I have thought it best to make general reference to this condition as in a way explaining inaccuracies which otherwise might lead to confusion if not contention.

20. Besides the grammar schools and the University, the records of the S. P. G. show that some of those rights were disposed of in this way. Apparently the Caledonia County Grammar School trustees were not alone in their early misapprehension of their powers.

21. "Lease Lands," I, 48-50. It will be recalled that such cutting of stumpage was the cause of action in *University of Vermont v. Ward*, 104 Vt. 239 (1932); *Ward*, however, was still alive. The above was written in 1928, and the *Ward* Case was decided in 1932. From the appearance of things, it must be concluded that the "inaction" respecting lease land administration was not restricted to the matter of the stumpage reservations.

To illustrate: In the town of Albany quadrennial appraisal of 1922, lot 55 is shown to contain $100\frac{1}{2}$ acres, 108, $101\frac{1}{2}$ acres, and lot 177, 92 acres, though each of the lots are supposed to contain 100 acres more or less.

It will also be seen from quadrennial appraisal that the total rent of the three above lots, excluding rent on the D. W. Buzzell and wife occupancy, 7 acres, in lot 177, which does not appear, is \$25.78, whereas the total rent on leases last made on these three lots, as appears on page . . . of this book, was \$36.60.

Just what rent the University is actually receiving will appear from the records in the Comptroller's office. In this particular case rents are being received as follows,—

On lot 55, \$12.60; on lot 108, \$6.00; and on lot 177, \$18.00. (See Rent Roll, pages 20, 22 and 21 respectively.)²²

There is little to say respecting the University's record of litigation, beyond the coverage already given it. It was seen to amount to very few actions, so far as those going into the Vermont Supreme Court are concerned.²³ The position of the court, respecting the college right, presented nothing novel or unusual, compared with rulings respecting other public rights.

Mr. MacFarland, in "Lease Lands," and others at the institution, have fretted considerably about the Reynolds decision.²⁴ Unaccountably, it seems to the writer, in view of the peculiar circumstances of that case. In urging a new test case by which to clear up some of the "lost lands," as to prescriptive rights running against them, Mr. MacFarland said he did not expect an adverse decision to occur.²⁵

THE S. P. G. LANDS

On the basis of the number of town charters in which an S. P. G. share was reserved, the Diocese should be an even larger holder of lease land acreage than is the University. This cannot be demonstrated here,

22. "Lease Lands," I, 60-62. A large number of his detailed town reports show that the Listers have not even gone this far—there is no acreage data in some of the quadrennial appraisals and only partial information respecting the rentals.

23. These included the Reynolds case, 3 Vt. 542 (1831); the Joslyn case, 21 Vt. 52 (1848); the Ward case, 104 Vt. 239 (1932); and the Carter case, 110 Vt. 206 (1939). To these may be added Strong v. Garfield, 10 Vt. 497 (1838); and Keith v. Day, 15 Vt. 660 (1843). These two involved University land and arose, between private parties, as an end-product of the University's administrative habits. The Joslyn and Carter cases were thought not to involve lease lands, but other holdings.

24. University of Vermont v. Reynolds, 3 Vt. 542 (1831).

25. "Lease Lands," I, 46.

in fact, because of the lack of data respecting the number of rights which may have been lost by adverse possession under the ruling in *Propagation Society v. Sharon*.²⁶ The minutes in the "Record Book" of the Board of Agents show that they were disturbed over the problem of the statute of limitations. But the minutes also indicate that they were not acting effectively about the matter.²⁷ The technique of land administration favored for this right prevents even an assertion as to the number of towns in which the S. P. G. right is being administered, or whether, in various towns, the whole share, or just a part of it, is under control.

The annual income is probably slightly greater than that of the University. The legislative Commission on Forest Taxation appears to have felt less secure in its information here than in the case of the University. In respect to the S. P. G. lots, the report says that the Diocese collects "about \$3,000."²⁸ The writer's impression is that this is somewhat conservative, as an estimate. His contacts with those concerned with the S. P. G. lots lead to an estimate of from \$3300 to \$3500 per year.²⁹

However, it is almost impossible to derive a figure of any precision. The system of administration, and particularly the system of handling the avails, leads to uncertainty. For one thing, it is next to impossible to determine whether a given item of income is rental money for a given time period. For another, the Diocese has carried out some conveyances of the commuted rent type, frowned upon in the Caledonia County Grammar School cases.³⁰ When such sums have been remitted to the treasurer

26. 28 Vt. 603 (1856). *Supra*, pp. 161-162.

27. At the meeting of Jan. 9, 1834, the following item appears: "The Statute of limitations being about to run against the claims of the Society, the agents thought proper to hold a meeting to see whether any further measures could be taken toward securing the Society's rights of lands." The meeting occurred in October. Various proposals were made, but no new measures adopted. "Record Book. Journal and Proceedings of the Agents," 1823-1927, p. 81. Hereafter cited as "Record Book: Agents." In the minutes for Feb. 3, 1848, this item is found:

That the Treasurer be directed to correspond with the Sub-Agents in the several Counties, to enforce upon them the urgent necessity of speedily examining the records in all those Towns where we have lands which have not been leased in order to prevent the loss of any such lots by the Statute of Limitations.

28. *Forest Taxation*, p. 8.

29. Clarke states that he was informed by the Treasurer of the Agents that at that time (1930) the annual income was about \$3700, being collected from 101 towns. "Vermont Lands," p. 296. In the first full, formal report by the Board of Agents, in 1845, the total income was given as \$3296. "Record Book: Agents," pp. 115-117.

30. *Caledonia County Grammar School v. Kent*, 84 Vt. 1 (1910); *S. C.*, 86 Vt.

of the trustees of the Diocese, they sometimes appear to have been credited to the annual income instead of being set up as a permanent fund, the interest of which should go into annual income. This, of course, besides confusing the income picture, runs contrary to the views both of the court and the legislature regarding the administration of such trusts. The income figure for a given year is not apt to be typical, either, because the collection of rents is even less steady and regular than in the case of the University. And where a collection may be made of several years' outstanding rent, the sum is apt merely to go to the credit of the income for the year in which the payment occurs.³¹

If the annual income does run somewhat in excess of that received by the University, that would best be regarded as due to the greater

151 (1912); Powers and Peck, Admr. for Judevine v. Caledonia County Grammar School, 93 Vt. 220 (1919).

31. For example, the financial reports in the "Record Book: Agents" show that the total for 1850 was \$4625.89; for 1852, \$3745.11; and for 1853, \$4206.08.

The following correspondence, found in the files of Joseph Wilson of Montpelier, illustrates some aspects of the methods followed:

Letter of E. A. C. Smith, Treasurer of the Episcopal Diocese to Guy Wilson, Sept. 8, 1925:

The Bishops stipend account is overdrawn about twenty dollars this month, and if possible I would appreciate a check from the Board of Land Agents in whatever amount you are able to send me at this time. To date I have received \$900 on this years account, and as this is not $\frac{1}{2}$ of the total amount which I am supposed to receive by July 1st, no doubt it is self explanatory. I have felt that it would be much less inconvenience for both of us, if it could be arranged on your end, to have a regular check sent me quarterly for $\frac{1}{4}$ of the total amount, in the months of March, June, September and December, on or before the 31st of each month. Perhaps you might not have funds available, but if it could be arranged in a regular manner it would assist me greatly in not overdrawing this particular account. I would like to know what you think of an arrangement like the above, which I suggest?

Letter of Guy Wilson to E. A. C. Smith, Sept. 7, 1925:

I have your letter of the 8th inst [probably the 6th, really]

I am enclosing check for \$900.

The yearly appropriation of the Land Agents for this purpose is \$1800.

I believe this completes this years payment. There happens to be plenty of funds in now so that I can relieve your stringency on this account.

I note what you say about a regular payment. This would be a very good idea if our payments came in regularly, but they do not come in so. As it happens this year the payments have come in very promptly and I can meet your request, but I can remember times in the past when the payments could not have been met in this way. If we could get some ahead it might be done but that policy is to spend yearly about all the yearly income. Perhaps it would be well to let it stand as it has been bearing in mind if you are ever short again, write me and I will do what I can and if possible anticipate payments.

number of rights pertaining to the S. P. G. rather than to better administration. Indeed, it is the opinion of the writer that the administrative practices and procedures of the Diocese suffer by comparison with those of the University.

The two Wilsons, first Guy and then Joseph, evidently had an interest in attempting to make the S. P. G. lands count for as much of an asset as possible for the Diocese. And the revised reimbursement status for the land agent enabled the latter to go farther with the lands than his predecessors. But, it still remains a part-time activity, as it always has been: something worked at during spare time. And those in positions of responsibility in the Diocese appear always to have been reluctant to consider the problem more realistically than this.³²

If the S. P. G. lots are in a state of some confusion, something can be said in defense of those more recently responsible. It was not until 1927 that the full control of the right was in the Diocese. Until that date the S. P. G. land remained under the ultimate control of the Society for the Propagation of the Gospel in Foreign Parts, in London.³³ The system of administration was that satisfactory to the Society. During the whole time, the income has, by action of the Society, been put to the benefit of the Episcopal church in Vermont. The lands were administered, however, by persons to whom the Society gave powers of attorney. This arrangement of powers of attorney set a pattern of organization, of which the system since 1927 was no more than a modification. Besides this, it must be borne in mind that there was a considerable early period of more or less complete inaction, followed by a time of litigation and exclusion from the exemption from statutes of limitations. Criticism of the current S. P. G. land operation should be cast primarily in respect to the failure of the Diocese to establish a clean-cut system since 1927.

The *Documentary History of the Episcopal Church in Vermont* relates, in great detail, the developments respecting the S. P. G. rights, as well as the glebe rights, commencing with the earliest action by the Society in London in 1762 and 1764 when its proceedings showed an acceptance of the donation of the S. P. G. rights and a resolution that

32. This is illustrated by the minutes in the "Record Book: Agents," *passim*. As an attempt to straighten out affairs a General Agent, one Fullerton, was appointed in 1844. However, thereafter, the minutes contain various items of complaint over his vouchers for expenses.

33. Hereafter referred to as "the Society."

agents be appointed to take charge of the lands. In 1773 the Society appears next to have exhibited an interest, and in 1785 a resolution was adopted instructing the secretary to take steps. The resolution is of consequence because it asserted an intention to make over the lands to the use of the Episcopal church in Vermont.³⁴

Apparently, however, this was mostly a matter of good intention. Nothing further of importance occurred for many years. The Vermont Episcopalians made several efforts to secure some action from the Society. First, they petitioned for a deed; then for arrangements by power of attorney; then again, later, for a deed; and finally again for a power of attorney. Some of these petitions were answered in the negative, and to some there appears to have been no reply. Among other factors, the problem was difficult of solution, in the eyes of the Society, because the Episcopalians in Vermont were not properly organized according to church canons.³⁵

The auspices of the Bishop of the Eastern Diocese were secured to overcome this, and, finally, in 1817 the first power of attorney was received. This power of attorney was renewed, without substantial change, from time to time until the transfer occurred in 1927.³⁶

The power was full and ample and was granted jointly to five men. It was on the basis of this grant of power that the New Haven suit was undertaken in which the United States court confirmed the title to the rights.³⁷

In the meantime, S. P. G. lands had been the subject of much concern, both in the legislature and in the annual Episcopal conventions. The legislature had received various propositions and petitions for the lands, including one from John Wheelock that they be granted to Dartmouth College and one from Ira Allen that they go to the University of Vermont.³⁸ The conclusion of all this had been the act of 1794 awarding the rights to the respective towns.³⁹

34. *Doc. Hist.*, pp. 7-8, and *passim*.

35. *Ibid.*, pp. 17-25.

36. The renewal in 1859 contained one significant change. It provided that leases should not be made for terms longer than twenty years. This restriction appeared in the renewal of 1870. The 1859 renewal also contained some urgently phrased instructions to the Agents to the effect that they be more energetic in securing the lands, making leases, and, particularly, in respect to rent collections. "Record Book: Agents," pp. 195-199, 216-222.

37. *S. P. G. v. New Haven and Wheeler*, 8 Wheaton 464 (1823).

38. *Doc. Hist.*, pp. 46-48.

39. *Ibid.*, pp. 48-50, 53-54. *Laws of Vermont* (1824 comp.), pp. 194-195.

Thus, a period of some fifty-five years intervened between the Society's first notice of the grants and the time at which it concluded any constructive action toward their administration. Furthermore, forty years had gone by since the Vermont government appeared. During a large part of this time the S. P. G. lots had been subject to much political pressure and to the pressure of settlers, without enjoying any effective oversight. And finally, a period of twenty-three years had passed during which the lots were under the influence of the act of confiscation.

An extended report, including a summary of the history of the situation, was made to the Episcopal convention by the Board of Agents in 1823. This report also gave the essential information respecting the New Haven suit,⁴⁰ just then concluded, and the plans for administering the lands. They expected to reduce popular opposition by giving leases to the then tenants, with no payment of back rent. They stated that they expected that the annual income would “. . . amount to Four Thousand, and that it will not exceed Five Thousand Dollars.” A pregnant item in the report, for later events, was the information that, “Agents were . . . appointed in the different counties authorized to execute leases in the name of the Society”⁴¹

Here we find the beginning of the method of administration which continued. From that time forward the *Documentary History* records frequent resolutions of the conventions requesting reports from the General Agents as to the state of the lands. In 1824 the agents replied that they were as yet unable to give a full account (this is found in later years to be a relatively normal reply), but they did say that approximately a third of the lands had been leased and the income would be “something more than one thousand dollars a year.”⁴² They also noted that there were then eight suits pending in county court.⁴³

Already, by 1826, the Prudential Committee of the Convention had

40. 8 Wheaton 464 (1823).

41. *Doc. Hist.*, pp. 213-218.

42. *Ibid.*, p. 267.

43. Both the *Documentary History* narrative of convention meetings and the “Record Book” of the Agents, over a period of some years, relate a constant condition of litigation. There will be “12 suits pending,” or a report of so many suits settled by compromise, and so on. The financial reports reflect this in items of expense connected with litigation. On the one hand, this must be accepted as a disruptive influence administratively. But, against this credit, one perceives that much of the reason for the long drawn-out continuance of the litigation was ineffective administration.

to report: "But as returns have been received from only four of the County Agents, and the principal pecuniary transactions have been carried on through them, the Treasurer found it impossible to present a full and satisfactory statement."⁴⁴ And in 1828 the report of the Prudential Committee was in a still more dissatisfied tone:

Information with regard to the present state of the trust . . . remains still so limited and ill-defined, that their [the agents'] report might perhaps as well be dispensed with . . . And, in a word, the whole business is in so unsettled a state, that neither the Agents themselves, nor their Treasurer, nor your Committee, can possibly, in any limited time, reduce confusion to order, or present a lucid or satisfactory view of the actual condition of affairs.⁴⁵

Soon after this the minutes are filled with remarks respecting the problem of making the work of the General Agents more effective. Already difficulties are apparent with the county agents, one having resigned and failed in business so that nothing could be expected of him, another failing to remit, others being remiss at enforcing collection of rents. Thus rapidly, the pattern of administration emerged which continued throughout the record. There were periods of more energetic administration than at other times. But the picture is essentially continuous.⁴⁶

It was a cumbersome and diffuse system which was created. The powers of attorney named a various number of agents as a board—the number being generally some half-dozen.⁴⁷ These, jointly, were respon-

44. *Doc. Hist.*, p. 292.

45. *Ibid.*, p. 305.

46. The "Record Book: Agents," p. 115, contains the following:

The undersigned general Agent of the said Society begs leave to report—That during the past year he has called on the Subagents in the several Counties in the State for Settlement with the Exception of Caledonia and Essex—but no full settlement made with any of them Except Major Hawley of Bennington Co

And on p. 171 the financial statement for 1854 concludes: "The rents on the 4 counties not reported are probably all collected (with exception perhaps of Essex County)."

47. The renewals of the power of attorney were occasioned by losses of membership of the Board, by death, removal from the state, and resignation. The "Record Book: Agents," p. 120, contains this significant remark from the minutes for June 4, 1846:

The Board of Agency . . . would respectfully report to the Convention of the Diocese . . . that it has duly received notice of the Action of the

sible. All of them were persons with other heavy responsibilities, serving in this capacity without other return than reimbursement for out-of-pocket expenses. The board, in turn, appointed county agents who were given authority to make leases and collect rents. They were entitled to a small fee for their services. They were to remit their collections to the treasurer of the board and transmit information respecting leases to the board.

After 1844 the system was further complicated by the creation of the office of General Agent. This post was evidently set up with the idea of establishing a more effective central control over the operations of the county agents. The real result seems, however, to have been just that much more confusion. The treasurer continued to exercise a central responsibility, and the relations between him and the general agent were not well-defined. Essentially the new functionary merely added another link to an already long, weak chain. The board, in turn, disbursed the avails to the Episcopal church in Vermont, a portion to the Bishop and any remainder to the clergy of the parishes.

Presumably, the Treasurer of the Board of Agents would be the focal point, and to some extent this occurred. The Reverend John A. Hicks, after whom the box is called,⁴⁸ was such a one, being appointed in 1857, and it was by virtue of this office that he possessed the box of leases which was lost for so long a time.⁴⁹

Since 1927 modifications have been made to account for the disappearance of the Board of Agents and the assumption by the Diocese of primary authority. The county agent system was retained. There was created a State Agent to whom the county agents were responsible. The state agent is responsible to the Board of Trustees of the Diocese and remits to the treasurer of that body. The board, in turn, distributes the income. So far as results are concerned, there has been no great change. The records respecting lots and leases are still incomplete and inadequate. The relations with the county agents are as tenuous as ever. The "Record Book" carries various entries in which the agents were endeavoring to

Convention at its last annual meeting with reference to this Board and has taken the same into consideration. The Board upon consultation does not deem it expedient for several weighty reasons that there should be an entire displacement of the present Board such as is contemplated in the recommendation of the convention

48. *Supra*, pp. 84-85.

49. The Rev. Mr. Hicks died in 1869. He had been a member of the Board of Agents for thirty years and secretary-treasurer for twelve. "Record Book: Agents," p. 214.

concentrate the custody of the leases and the data respecting the lots in the office of the treasurer.⁵⁰ Guy Wilson wrote in 1931:

It has always been my idea that as far as practicable the office having charge of the S. P. G. lands should have available in the office what information could be reasonably obtained and with that idea in my mind I have procured what data I could, and it is on file. Many of the county agents have private information that they keep on file in their offices—but with the frequent changes in county agents these data get lost.⁵¹

In 1940, when the writer was inspecting the S. P. G. records, Mr. Joseph Wilson was still engaged in this effort, and two counties were still not in his current work book. He had no specific information on lots in those counties other than doubtful lists of rentals from the county agents, listed by their lease numbers, and including the name and address of the person paying the rent, and the amounts. Moreover, data on other counties was anything but satisfactory. The letter reproduced in Chapter I is illustrative.⁵² Even at this late date most of the lots were recorded only by the traditional familial name which had become attached to them.⁵³

Two other interesting situations may be added to the demonstration that the course of S. P. G. administration has been more or less unvarying. The "Record Book" minutes contain various entries on the problem of requiring the county agents to remit their receipts.⁵⁴ Mr.

50. See *ibid.*, minutes: April 30, 1823, p. 39; June 15, 1825, p. 46; Jan. 9, 1834, p. 85; June 5, 1844, p. 111; June 13, 1852, p. 164; July 11, 1854, p. 171; July 10, 1855, p. 174; Aug. 12, 1856, p. 181; July 13, 1858, p. 187; July 7, 1870, p. 225; June 16, 1903, p. 336. These entries variously represent efforts to secure the use of uniform forms, standard accounts, "suitable bookkeeping," lists of the lands, the leases, etc. The period from 1870 to 1903 is largely a blank in the records. One Bliss was secretary for thirty years, from 1872 to 1903, dying in office, and for that period the minutes are useless. Furthermore, the full fiscal reports ceased as of Hicks' incumbency as treasurer, were reinstituted in 1875 when Mr. Dewey succeeded him, then are only fragmentary from 1888 to 1903. The general conditions were not improved any by a fire in 1850, at the then treasurer's office, in which a large proportion of the leases were burnt. By 1860, the agents were still attempting to compile the information needed to replace those lost. *Ibid.*, p. 192.

51. From correspondence file in possession of Joseph F. Wilson, Montpelier.

52. *Supra*, pp. 6-7.

53. Letters in Mr. Wilson's correspondence file refer to one lot, about which some difficulty existed, as the "Honey Pot" lot!

54. "Record Book: Agents," minutes: Apr. 30, 1823, p. 46; Apr. 8, 1838, p. 92; Feb. 2, 1841, p. 102; Feb. 3, 1842, p. 106; July 10, 1855, p. 174; Aug. 12, 1856, p. 181.

Wilson in 1940 was still struggling with this problem. The other relates to the administration of the timber lands in Essex County. This appears in the minutes as early as 1845 and is still unsolved.⁵⁵

The legal aspect of the S. P. G. right is possibly different in some respects from the other public shares. To begin with, the Diocese is a far more "private" organization than are the other trustees, and before that, of course, the Society was a British corporation. And there have not been the explicit rulings by the court respecting this right which were found for the others. As was seen, the only case bearing directly on the status of the S. P. G. lots was *Propagation Society v. Sharon*,⁵⁶ and the best that opinion offers is the opportunity to draw implications. It was mentioned in connection with the examination of that case that Mr. Joseph Wilson contemplated commuted rent conveyances. Various items in the correspondence file of the State Agent, dating from the time of Mr. Guy Wilson, show clearly that they then assumed they could sell the S. P. G. lots. And the earlier powers of attorney from the Society included authority to "demise."

It seems to the writer that this is a questionable position. The S. P. G. right has been administered under the advantages accruing to the other public rights; that is, they have enjoyed the benefit of the special doctrine respecting perpetual leases, and they have been blessed with tax exemption, as being "public, pious and charitable" lands, as granted in the charters. The only distinctive point in which these lots enjoyed less advantage than other public rights is the fact that they were for a time refused the exemption from the statutes of limitations. Yet, even here, Judge Story pointed out that the act removing them from the protective clause, in itself recognized the S. P. G. lots as being among the public rights.⁵⁷ The question, then, is whether the S. P. G. right may enjoy the benefits of a special status, without incurring the limitations and obligations entailed thereto.

The S. P. G. right is so little defined legally because it has had so meagre a history of litigation, in the higher echelons of judicial appeal. Despite the many county actions to be noted in the Diocese records, few cases are reported in the Vermont Supreme Court, and none recently. The Vermont court records include *Colchester v. Hill*⁵⁸ and *Rood v.*

55. *Ibid.*, minutes: June 4, 1845, p. 114.

56. 28 Vt. 603 (1856).

57. *S. P. G. v. Pawlet and Ozias Clarke*, 4 Peters 480 (1830).

58. *Brayt*. 65 (1815).

Willard,⁵⁹ which were attempts by selectmen, in actions of ejectment, to recover S. P. G. lots under the 1794 act of confiscation, and Propagation Society v. Sharon.⁶⁰ That is all. Then there were the two federal cases in 1823 and 1830.⁶¹ This lack of legal disputation is probably by design. The pages of both the *Documentary History* and the "Record Book" are replete with remarks showing a firm purpose to conciliate the general public as much as possible. The *Documentary History* dwells on the Episcopalian minority status in the state. The agents' records demonstrate their various techniques for securing their lands with the least possible friction.

GRAMMAR SCHOOL LANDS

Of all the public shares, that for a county grammar school has perhaps wound up, in its effects, farthest afield from the original contemplation of the donor. (This is except for the glebe which, by confiscation, was diverted to the use of the towns.) This statement is predicated on the development which has occurred respecting secondary education. The high school system of today has hardly any parallel to offer for the scheme in mind when the founders of the state spoke of the plan for county grammar schools. And this, of course, is founded on the turn of demographic development in the state. The size of the population, the ease of transportation and communication, the greater per capita wealth which has permitted more diffusion of education, the mechanization of farming methods which likewise has permitted more youngsters to spend time in school, the general spread of "democracy of education" as a belief, and finally, profound changes in the concepts of the proper content of secondary schooling—all these factors were not foreseen by those who set afoot the movement for county grammar schools and reserved the grants of land to that purpose in the town charters.

The county grammar school, as an institution, and its history, need not be related here at any great length. The story has been well told by Edward D. Andrews.⁶² Only so much is in order here as is needed to

59. Brayt. 65 (1816); S. C., Brayt. 67 (1817).

60. 28 Vt. 603 (1856).

61. S. P. G. v. New Haven and Wheeler, 8 Wheaton 464 (1823); S. P. G. v. Pawlet and Clarke, 4 Peters 480 (1830).

62. "Grammar Schools." This was a publication of a portion of Dr. Andrews' dissertation, submitted to the Graduate School of Yale University in 1930, in partial satisfaction of the requirements for the degree of Doctor of Philosophy, which he was awarded that year. The part deleted, by Dr. Andrews, dealt with the later period of the rise of the public high school system.

understand the public right of lands originally designed to aid such schools.

It is apparent that the scheme was to have been a grammar school in each county. This is indicated by the wording of the grant in the town charters, and in the words of the first state constitution.

The charters are about evenly divided in the use of two variants of the granting clause: "for use of County Grammar Schools in said state" and "for use and benefit of County Grammar Schools throughtout this State." The first Constitution of Vermont, 1777, said: "One grammar school in each county . . . ought to be established by direction of the General Assembly."⁶³ By the time of the revision of 1786, the idea had been modified: ". . . and one or more grammar schools be incorporated, and properly supported in each county in this State."⁶⁴ This form continued, without change, in the 1793 revision.⁶⁵ The latest version of the Constitution carries the provision: ". . . one or more grammar schools to be incorporated and properly supported, in each county, in this State."⁶⁶

The first disposition of grammar school lands was in the grant contained in the charter incorporating the Caledonia County Grammar School at Peacham in 1795.⁶⁷ Other secondary schools preceded this one: Clio Hall at Bennington in 1780; Windsor and Rutland County Grammar Schools in 1785 and 1787 respectively; Athens Grammar School in 1791; and Cavendish Academy in 1792.⁶⁸ They did not, however, receive the grants of lands.

It is with the Caledonia grant that the initial change in the general scheme occurred, and the one which, in the writer's opinion, was the most momentous for the future. It seems inescapable that the plan had been for an administration of the grammar school rights, of such a nature that these lands would benefit such schools throughout the state. Besides the charter phraseology quoted above, it should be observed that a considerable number of the charters went on to state: ". . . and the Improvements, rents, Interests and Profits arising therefrom shall be under the Controul, order, direction and disposal of the General As-

63. Ch. II, sec. XL. Slade, *State Papers*, p. 254.

64. Ch. II, sec. XXXVIII. *Ibid.*, p. 528.

65. Ch. II, sec. 41. *Laws of Vermont* (1824 comp.), p. 53.

66. Ch. II, sec. 64. *P. L.*, p. 51.

67. *Laws of Vermont, 1794-1796, 1795*, pp. 12-14.

68. Andrews, "Grammar Schools," p. 134.

sembly of said State forever”⁶⁹ However, with the incorporation of the school at Peacham, and the grant of lands to it, the policy was inaugurated by which grammar school lands came to be identified as for the benefit of particular schools.

The legislators were evidently somewhat at sea in the matter. During the consideration of the Peacham petition, the legislative committee to which the petition had been referred reported:

That, from an examination of the charters, in which particular rights of land were granted . . . it appears, that the said rights were to be appropriated to the county grammar schools *in*, or which *might* be *within* the state, without confining the rights to the several counties in which they lie; and therefore suggest to the House, whether or not it will be expedient to pass said bills, till the sense of the Legislature shall be known on the construction of said grants.⁷⁰

It is true that the Peacham school grant contained a proviso that future legislatures could order distribution of avails so as to create an equal proportion with other counties in the state. And various provisions are found in the grants to other schools. A few of them were complete and specified simply that future legislatures should have the power to change the disposition of the lands,⁷¹ while at the other extreme there were grants to schools, with no saving clause whatever.⁷² In any case, the legislature cannot be said to have exercised good foresight in writing this part of the various acts of incorporation of schools. The court, as we have seen, has been strict about the matter. In fact, the Caledonia

69. *E.g.*, charter of Cabot. *Vermont State Papers*, II, p. 36. Such charters included the college right in this stipulation. It is somewhat surprising that the Vermont court did not rule that these rights could not be granted away by the legislature in view of the literal reading otherwise given to charter provisions.

70. *Proceedings of the General Assembly*, 1795, p. 152, as quoted in Andrews, "Grammar Schools," p. 132.

71. *E.g.*, Orange County Grammar School at Randolph, *Laws of Vermont*, 1805-1807, 1806, pp. 153-157; Windsor County Grammar School at Norwich, *ibid.*, 1805-1807, 1807, pp. 173-175; Orange County Grammar School at Thetford, *ibid.*, 1819-1821, 1820, pp. 161-162.

72. *E.g.*, Windsor County Grammar School, *ibid.*, 1794-1796, 1794, pp. 113-114; Addison County Grammar School, *ibid.*, 1796-1798, 1797, pp. 36-38; Rutland County Grammar School, *ibid.*, 1805-1807, 1805, pp. 39-40. It is to be noted that occasionally, even though there was no saving clause, the legislature did re-distribute or otherwise dispose of the lands involved. An example is the two Orleans County Grammar Schools at Craftsbury and Brownington. *Ibid.*, 1811-1814, 1812, pp. 65-67, and *ibid.*, 1819-1821, 1820, pp. 37-40.

grant itself caused trouble when the legislature attempted to give some of the lands to the Lyndon Institute.⁷³ It was found that the proviso was not sufficient to cover re-distribution to another school within the same county.

With the passage of time, the school movement developed rapidly. As Andrews points out, the whole thing changed from a county program to one sponsored by various communities which determined to be the site of a school and thereupon petitioned for an incorporation—*and for a grant of the grammar school lands*.⁷⁴ Indeed, it would seem, from the history of the development, that the possibility of securing the benefit of the lands acted as a strong motivation in some instances toward the establishment of schools. The legislature, on the other hand, ordinarily dealt with the petitions in a *quid pro quo* fashion and set requirements by which the community must contribute specified amounts within specified times in order to gain the public rights. Some of the proposed schools foundered on this rock. Under the pressure which the school movement developed,⁷⁵ the legislature produced a wide variety of provisions respecting the granting of the grammar school lands.⁷⁶ The net result of the whole business was that grammar school lands came to be a vested right in particular schools, and the scheme of a state-wide benefit was lost.⁷⁷

The court has expressed the view that the legislature did retain the authority to insist that the trusts created by the grants be properly car-

73. *Caledonia County Grammar School v. Burt*, 11 Vt. 632 (1839).

74. Andrews, "Grammar Schools," pp. 126-127, 150-151, 173-174.

75. Andrews lists 118 grammar schools and academies incorporated between 1780 and 1870. "Grammar Schools," App. H, p. 207.

76. One of the most extreme variations was in the case of the Londonderry Grammar School. Here it was provided that if the school failed to function, the grammar school lands in the town of Londonderry should go under the control of the selectmen for use of the common schools. *Laws of Vermont, 1822-1826*, 1822, p. 76. This contingency in fact eventuated.

77. The change from the original idea is particularly pointed when it is observed that in three counties of the state there are no grammar school lands. These counties include areas which were fully covered by Wentworth grants. Attention to this condition was drawn in the report of the Superintendent of Education of 1880. *The Twenty-Sixth Vermont School Report, 1880* (Rutland, 1880), App. Bound in *School Reports, Vermont, 1876-1880*. Hereafter cited as *Twenty-Sixth School Report*. Mr. Stone said: "It is obvious that the original intent of these lands is perverted and the state should take action to locate them, determine their revenue, and direct their funds into proper channels." Mason S. Stone, *History of Education, State of Vermont* (Montpelier, [1935]), p. 104.

ried out. There is no evidence that the legislature has done much of a constructive nature toward this end. The only action until quite recently was the resolutions in the late nineteenth century which resulted in the legislative reports in 1878 and 1882 on sequestered lands and the report to the Governor on grammar school lands in 1880.⁷⁸ Hence, the question arises as to how well administered have been these grants. The evidence available in this research does not conduce to a favorable answer, but it must be admitted that the coverage here is not wide enough to justify a definite, all-inclusive judgment.⁷⁹ There was opportunity to study in detail only relatively few of the schools or school records.⁸⁰ In addition, the manuscript of a then unpublished book on the Town of Peacham was read.⁸¹

The records are not admirable as to the administration of the lease lands. They show in each case initial bursts of energy aimed at securing the lands and leasing them.⁸² Thereafter, the effort slacks off, as was described in Chapter III. The minutes give less and less attention to the lease lands. Many years after the grants, one will find an occasional item respecting a desire to locate and secure lands still not under control. Schools in the early days were largely dominated by the clergy, and the minutes reflect much more concern for the moral welfare of the students than effective activity for the financial welfare of the institutions. These boards of trustees are those which most exhibited the tendency toward long tenure of office. The Orange County Grammar School minutes

78. *Laws of Vermont*, 1878, pp. 138, 296-310; *ibid.*, 1882, pp. 338-352; *Twenty-Sixth School Report*, App. See App. G. and App. H.

79. The Vermont Educational Commission reported: "There was, however, a manifest reluctance on the part of certain of these academies, notably one of the largest, to make public the information desired; it was therefore determined to confine the detailed analysis to the high schools." Vermont Educational Commission, *Report*, 1914 (Brattleboro, Boston, 1914), pt. IV, p. 63. Hereafter cited as Vermont Educational Commission, *Report*.

80. In addition to the difficulty experienced by the Vermont Educational Commission, some of the schools whose records would be of interest here are no longer functioning, and their records have been lost. See *supra*, p. 85, for an incident of this nature.

81. This study, by Professor E. L. Bogart, has since been published by the Vermont Historical Society. It is reasonably exhaustive and thereby includes considerable data respecting the school at Peacham, which has become the Peacham Academy. See Bogart, E. L., *Peacham: The Story of a Vermont Hill Town*.

82. In the case of the Randolph school the minutes of the first meeting are devoted to this topic. It was not until after that, that the board took time to organize and adopt by-laws! Orange County Grammar School, "Records of the Trustees," 1806-1867, minutes for Feb. 23, 1807.

extend from the incorporation in 1806 to the transformation in 1867 of the institution into a state normal school. During that period there were but three presidents of the board and but three clerks. The second clerk, one Nutting, functioned as such from 1823 until 1857 at which time he retired with the appreciation of the board for fifty years of service to the school. Information to be extracted from his records is slim indeed for the latter part of his tenure. Of even more interest is the fact that from 1827 on he also functioned as treasurer, and as collector of rents! E. L. Bogart provides the supposition of similar conditions at Peacham, and the Washington County Grammar School records were of a piece with these. Mr. John C. Huden, Principal of the Castleton State Teachers College and secretary of the trustees of the Rutland County Grammar School, has informed the writer that he has encountered the results of like practices in the past records of that board during his recent efforts to pull together the administration of the grammar school lands in that county. And the writer found that the Addison County Grammar School records, while considerably better than some of the others, still fell far short of a desirable standard and that even now there is a distinct possibility that the board of that school does not have under its control all of the lands which its grant might have included. There is reason to believe, from fragmentary information received from credible sources, that other schools would exhibit similar records.

Many of the grammar schools and academies have disappeared in the face of the rise of the public high school system. In such cases the legislature has provided that the grammar school lands shall be for the benefit of the high schools in the towns respectively,⁸³ although it must be remembered that earlier acts, as in the case of Londonderry, occasionally provided for their devolution to the benefit of common schools.⁸⁴ Edward Conant, State Superintendent of Education, commented vigorously on this fact.⁸⁵ He was charged with making the investigation and report of 1880. He pointed out strongly that the grammar school right had been in contemplation of secondary education and that it constituted a perversion of the purpose of the reservation for the benefit to go to common schools.⁸⁶

83. *P. L.*, ch. 179, sec. 4297.

84. *Laws of Vermont, 1822-1826*, 1822, pp. 76-77.

85. *Twenty-Sixth School Report*, App., pp. 5-6.

86. He also spoke urgently on the educational inadequacy of some of the secondary schools receiving the benefit of the lands, as well as on the failure of ". . .

A few of the old schools persist, the oldest in continuous existence being the Peacham school. In three instances, the grammar school rights have been diverted upward a notch in the educational scale to the collegiate level: the Orange County Grammar School at Randolph became the State Normal School, and still later a State Agricultural College; the Rutland County Grammar School evolved into the Castleton State Teachers College; and the Lamoille County Grammar School at Johnson likewise went that road.

There is still another type of evolution which deserves special attention as it most forcibly demonstrates the inflexibility and persistence of the effects of early grants, even in a perverted form. This form of development is at present represented by the Washington County Grammar School at Montpelier and the Addison County Grammar School at Middlebury. In these cases the "school" consists of no more than the Board of Trustees and the real property which they control. In each instance, with the rise of the public school system, there came a time when the grammar school made a deal with the community to join with the school district and pool resources. The grammar school had to offer, besides its income from the lease lands, a school site and building, plus what equipment was on hand. To a small Vermont community this was enticing. The price, however, has since proven high.

In each instance, the grammar school exacted, in return, the privilege of membership on the district school committee. As a consequence both of these communities now find themselves with a school committee composed partly of members elected by the community and partly of members chosen by, and from, the board of the grammar school, which is self-perpetuating. Direct personal contact by the writer with members of both of these grammar school boards has brought out distinctly that they feel they have an important function—one might call it a "mission"—to perform in exerting influence on the affairs of the public school. A president of one of these boards went so far as to say to the writer that the grammar school representatives on the school committee served to keep things on an even keel and prevent the public from accomplishing anything "too radical." It is a singularly undemocratic arrangement, and dissatisfaction with it appears from time to time in each of the communities. In fact, the course of the present study being known of, the writer was appealed to in one of the communities as to whether there

the laws by which money is granted without care to secure a proper return." *Ibid.*, App., p. 6.

were no way in which "the grip of the grammar school board could be broken." The answer was not satisfactory to the inquirer.

To bring the arrangement to an end the community would have to reimburse the grammar school for what it has put in, including the land on which the school building now sits, and this would be prohibitive. The Franklin County Grammar School at St. Albans was of this type for a number of years, but more recently it abdicated and contents itself now with administering the lease lands, turning over the avails for the use of the school. There appears to be no such inclination on the part of the boards at Montpelier or Middlebury. The legislature is incapable of touching the corporate status of the boards. The court has noticed this mode of "conducting a grammar school" and condoned it.⁸⁷

An attempt to evaluate the financial aspect of the grammar school right leads to various possible conclusions. At first glance, the sums available to a given school are found to be so small as to seem ridiculous.⁸⁸ One receives an impression that the benefit of the right has been so dispersed as to have had its usefulness nullified. This is, of course, especially true in those counties in which the avails came to be distributed between several schools.⁸⁹ But then, one recalls that in the early period during which the grammar schools and academies flourished⁹⁰ the level of educational expenditures was not what we know today. A secondary institution might well manage to operate on an annual budget of \$500 to \$600.⁹¹ For such institutions, except for popular subscriptions for build-

87. *Franklin County Grammar School v. Bailey*, 62 Vt. 467 (1889).

88. In the *Twenty-Fourth Vermont School Report*, which was the first report of the State Superintendent of Education made to the legislature, in 1876, reports are included on the normal schools. The Randolph Normal School is found to have an income from the lease lands of \$120.00, and the Johnson Normal School reported income from that source of \$159.00. *The Twenty-Fourth Vermont School Report, 1876*, (Rutland, 1876), pp. 77, 86. Bound in *School Reports*, Vermont, 1876-1880. Hereafter cited as *Twenty-Fourth School Report*.

89. Edward Conant, State Superintendent of Education, remarked on this and felt that the cause of education would be better served by one really good school per county in place of a cluster of poor, weak schools. *Twenty-Sixth School Report*, App. p. 6.

90. For our purposes these terms are interchangeable. At first, during the 1820's this was not so, and there were instances, as at Thetford, where the name of an institution was revamped in order to assure eligibility for a grant of grammar school lands. Later, the legislature came to make the grants just as readily to institutions going under the designation of academies.

91. In discussing the Orange County Grammar School, Andrews says:

Apparently the school was not as pressed for funds as the one at Montpelier, for . . . after Mr. Nutting's salary of \$400 had been paid, it was

ings and repairs, the only important sources of income were tuitions and the land rents. It is evident from early records that the rents in some instances provided the essential margin for continued operation, slim though the sum of the rents might be.⁹²

Another aspect to be remembered is that the possibility of a grant of the lands was sometimes a stimulus in the establishment of a school. One cannot but feel, at times, that this interest was not altogether admirable.⁹³ Nevertheless, the result was the creation of schools and the provision, thereby, of educational opportunities which otherwise were non-existent. Although the system of education which these schools provided has passed and was open to some serious criticisms, it did fill the gap in the early period and, no doubt, was a stimulus in turn to broader later educational development.

Herein, the relevant criticism is in respect to the grammar school lands. Three adverse evaluations are available. The first is that the scheme effectuated by the legislature, in making the grants, produced inequities of opportunity and of public benefit as between different areas of the state. The second is that the scheme has made for inflexibility—for an inability to adjust the use and benefit of the grammar school reservations to social and educational changes. The third is that, assuming the merits of the purpose, no adequate provision was made for careful administration of the lands.

So much of the reports made to the legislature in 1878⁹⁴ and 1882⁹⁵ as pertains to county grammar school lands is presented here:

1878	<i>Acres</i>	<i>Income</i>	1882	<i>Acres</i>	<i>Income</i>
Addison	1130	\$ 71.00		1230	\$ 89.50
Bennington	.....	.....		.....	.....
Caledonia	3965	419.54		3320	427.63
Chittenden	.....	.....		503	37.50
Essex	1142	68.50		1142	105.22

found at the end of the year that with the tuition (amounting to \$206.11) and the income from the Grammar school lands, they had paid all bills and had a balance to carry over of \$129.21. Accordingly they voted to reduce the tuition to \$1.50 a term.

Andrews, "Grammar Schools," p. 166.

92. Cf. *ibid.*, pp. 150-151.

93. An instance which illustrates this is the competition of petitions to the legislature from Middlebury and Vergennes for the Addison County grant. *Ibid.*, pp. 132-133.

94. *Laws of Vermont*, 1878, pp. 296-310. See App. G. for complete tables.

95. *Ibid.*, 1882, pp. 338-352. See App. H. for complete tables.

Franklin	1715	140.99	1851	143.39
Grand Isle	....	....	....	....
Lamoille	3351	310.90	2818	261.79
Orange	2131	452.17	2234	478.67
Orleans	5459	632.82	5261	546.72
Rutland	1319	124.00	1387	134.76
Washington	2686	380.77	2545	356.66
Windham	473	84.46	479	79.06
Windsor	1183	179.29	1083	161.29
	<hr/>	<hr/>	<hr/>	<hr/>
	24,554	\$2,864.44	22,853	\$2,822.19

Several points are apparent. The disparities between the two columns are distinctly noticeable. It is to be remembered in this connection that such differences are found between reports only four years apart and that both reports came at a time long after the administration of the grammar school lands could be expected to have been systematized. No explanations accompany the reports to cover the changes between the two. Perhaps the most interesting item is the appearance in the 1882 report of 503 acres in the Town of Huntington, in Chittenden County. The report of 1878, as well as the 1880 report to the Governor, represented both that town and county as containing no grammar school lands.⁹⁶ The inequalities existing as between counties in the distribution of the grammar school right appears. And so, also, do the differences in the handling of the lands—the income per acre varies widely. The variations in the reports demonstrate, too, what confronts the individual who would go into the study of the subject of the lease lands far enough to know the true situation respecting individual parcels, or even any given class of lease lands.

The year 1914 saw publication of the report of the Vermont Educational Commission, which undertook to make an exhaustive investigation and report thereon respecting all aspects of education in the state. Its remarks respecting the grammar schools and the grammar school lands merit quotation:

COUNTY GRAMMAR SCHOOLS AND GRAMMAR SCHOOL LANDS

Mention is made, in an earlier part of this

96. *Ibid.*, 1878, p. 299; *Twenty-Sixth School Report*, App., p. 3. The 1878 and 1882 reports to the legislature covered all classes of lands sequestered for public, pious and charitable uses, in breakdowns by classes and by towns and counties. They were in simple tabular form with footnotes covering individual idiosyncrasies. The 1880 report did not include fiscal data, but was intended as a critical analysis of the utilization of the benefit.

report, of the county grammar schools incorporated as private institutions in nearly every county in the state, largely within a third of a century after the adoption of the Constitution of 1786, to some or all of which several corporations the General Assembly granted the lands situated in the same county, reserved in town charters to the use of county grammar schools. Though this Commission does not deem matters relating particularly to these county grammar schools and the lands granted to them, to be within its province, yet it ventures to call attention to them. The Commission understands that most if not all of these county grammar schools ceased to operate years ago, though in some and perhaps in most instances the corporate entity still exists; and that by force of legislative enactments or otherwise, the income from the grammar school lands now goes to the use and benefit of other educational institutions, public or private. The Vermont school report made by the state superintendent of education in 1888, states that such lands in the state aggregate 23,853 acres, appraised at \$173,557, and that the rent received therefrom was then \$2,800. Regarding the present rent and the use made of it, the Commission has no adequate information; nor has the Commission sufficient information upon which to base any opinion concerning the reserved power of the General Assembly, if any it has, to act in relation to the lands or the rents and profits derived therefrom. It seems, however, that these lands and the use of them are of such consequence to the state, educationally, as to justify the appointment of a commission to investigate and report relative thereto, and relative to the county grammar schools to which the lands were granted, to the end that so far as it has power, the legislature may take action, looking to a more general distribution of the rents and profits to the public schools in the several counties in the state.⁹⁷

Here, in the case of the grammar school right, is to be seen an example of the apparent relation between the degree of decentralization of administration and the frequency of law suits. The grammar school right has been involved in a disproportionate amount of litigation, compared with the two rights, the analysis of which has preceded this.⁹⁸ It is seen that there are two general lines of conflict underlying these ac-

97. Vermont Educational Commission, *Report*, p. 34.

98. *Orange County Grammar School v. Dodge*, Brayt. 223 (1817); *Caledonia County Grammar School v. Burt*, 11 Vt. 632 (1839); *Orleans County Grammar School v. Parker*, 25 Vt. 696 (1853); *White v. Fuller*, 38 Vt. 193 (1865); *Jamaica v. Hart*, 52 Vt. 549 (1880); *Franklin County Grammar School v. Bailey*, 62 Vt. 467 (1889); *Caledonia County Grammar School v. Kent*, 84 Vt. 1 (1910); *S. C.*, 86 Vt. 151 (1912); *Huntley v. Houghton*, 85 Vt. 200 (1911); *Powers and Peck, Admr. for Judevine v. Caledonia County Grammar School*, 93 Vt. 220 (1919).

tions. The principal cause of them was attempted redistribution of the lands. The other cause was poor administration of the lands and efforts to recover therefrom. And it will be recalled that the position of the court has been to protect and maintain original established relationships and rights. The grammar school litigation is preeminent in illustration of the rigidity of the lease land system as a social and legal institution.

TOWN-ADMINISTERED LANDS

The towns have been responsible for several classes of lease lands, which fall into the two general fields of education and religion. So far as this study was able to be extended, the report in this area of the lease lands is largely negative, as was anticipated in Chapter III. Little information is available, short of the most exhaustive research in each of the almost 250 towns, and it is highly doubtful that even so extensive an effort could be guaranteed to produce accurate data. The condition of both land records and town financial records, in many instances, would nearly, if not quite, preclude assurance of absolute success. The writer's own experience in visiting the offices of a number of town clerks and treasurers verifies this statement, and it is further supported by the findings of others.

The Vermont Educational Commission was emphatic in its remarks respecting data pertaining to school affairs. For example:

The superintendent reports 64,518 pupils in the public schools,—32,524 boys and 31,195 girls. This last figure should be 31,994. This total probably includes the pupils in the secondary schools, variously given as 5653 or 5496 in the high schools, and 1421 in the academies. These discrepancies are characteristic of the superintendent's reports; the returns to his office are frequently inaccurate The total 5496 does not correspond with the sum of the pupils by years, 5451; or by courses, 5287.⁹⁹

As a generalization, the Commission concluded:

A large part of the material from which much had been expected proved, when subjected to careful scrutiny, to be untrustworthy. The statistics contained in the biennial school reports are frequently of this nature a mass of uninterpreted statistical detail having little practical value The data are gathered through well-worn channels from various sources, chiefly from the clerks of the towns Where the returns should

99. Vermont Educational Commission, *Report*, p. 25.

correspond with those from other sources there are wide discrepancies . . . occasionally the results are wholly misleading It is impossible from such data to construct accurate comparative statistics.¹⁰⁰

This stricture applies to the Commission's experience with both general school records and financial records:

During the last weeks of March the town clerks were asked to send the registers of the school year 1911-12 to the secretary of the commission. The registers from 202 of the 246 towns and cities were so forwarded.¹⁰¹

An additional complication was found: "There are some towns in which no minutes are kept of the meetings [of school directors] that are held."¹⁰² And, further: "In many towns so little attention is paid to this [mandatory] school census that the federal census for 1910 showed several thousand more children than were reported by the school clerks."¹⁰³ Another element of the problem was recognized: "There is, however, no uniformity in these records, and consequently much confusion arises when comparisons are made. Each superintendent tends to have his or her own way of recording data, and in many cases does not use the system employed by his predecessors."¹⁰⁴

As to finances, the Commission said:

The most practical improvement suggested by this study . . . is that a uniform method of accounting should be adopted by the towns The blanks on which the towns supply their data to the state are at present uniform, but the accounting methods and results are variable The essential object of the method of accounting should be an exhibition of the true revenue and expenditure . . . of the town Instead of the true revenue and expenditure, most of the town reports contain merely a summary of the actual receipts and payments, and these . . . are cast in such variable forms that no two of them are alike The absence in most town reports of statements giving the real resources and liabilities . . . has produced a divergence of practice in regard to the funds.¹⁰⁵

100. *Ibid.*, p. 217. It will be recalled that this fits with the writer's experience and with comments to him, made by various state officers.

101. *Ibid.*, p. 37.

102. *Ibid.*, p. 39.

103. *Ibid.*, p. 41.

104. *Ibid.*, p. 53.

105. *Ibid.*, p. 134.

The experience of the Commission has been presented at some length because of its significance. Here was a well-staffed agency, operating under state authority, with two years of time available, and this was the limit of its ability to get at the facts. The experience in the present research goes to show that no great change has occurred in the intervening thirty-five years. Nor is the condition, as portrayed above, limited to school matters.

A careful inspection was made of the town report from every town and city for the year ending March, 1946, in an attempt to secure some sort of data respecting the lease lands under control of the towns. The results were at least illuminating. A rough classification of the 246 reports was accomplished in respect to the data presented, and the quality of the presentation, on the lease lands for which the town is responsible and in which it has an immediate interest.

To begin with, there were forty reports in which there was no item of any kind which could be identified as either revenue or disbursement of lease land income. A few of these instances would naturally occur because of the absence of public rights, as in the case of Alburgh. But this would cover only a minority of that group of reports. In the remainder, it is to be concluded either that the public lands have disappeared or that the finances of them are simply lumped in with other fiscal matters. This is a reasonable possibility in the case of educational moneys, but is difficult to reconcile where there should be disbursements of the moneys for religious benefit.

It is interesting, too, to observe that one of the forty, Rockingham, has a town manager government and displays the more technically correct and detailed reports which distinguish such towns. Brattleboro was another particularly interesting case. It has a very elaborate and detailed report and accounting system. It is audited by a firm of professional accountants. But nowhere in the town report is there any separate or distinct information of any kind respecting lease lands.

To make the matter worse, in some of the remaining 206 reports, which were credited as reporting, the only data found was included in the school treasurer's figures, none appearing from the selectmen or town treasurer. Furthermore, others would show just an income item, or a disbursement item, but not both.

The 206 other town reports were listed as "poor," "fair" or "good," depending, in the writer's opinion, on how much understanding could be gained from them about the lease lands. It is admitted that the classifica-

tion, as well as the distribution of reports into the different categories, was arbitrary. In view of the utter lack of any uniformity in town reports no other technique is possible.

Ninety-eight reports were considered as "poor." They barely signified that the town was concerned with lease lands. For practical purposes, such as the one herein, they could well be bracketed with the towns which carried no lease land data. A few examples will demonstrate the inadequacy of this large group of reports. The Town of Brunswick, in its treasurer's report, merely carried the item: "Receipts, leased lots, \$14.00." Fair Haven, in the town school account, showed: "Rent, land, F. S. Allen, \$7.50." Fayston showed two items with no correlation: in the treasurer's report, "cash from lease land rent, \$63.87," and in the auditor's report, "due from lease land rent, \$78.54." Hinesburg's treasurer reported: "Lease land rent, \$103.43." These cases are typical, rather than otherwise.

Those reports rated as "fair" numbered eighty-one. They were not adequate for a full, clear picture of the status of the lease lands, but offered more to go on than the preceding group. In other words, they gave partial information, in one respect or another. They frequently included a list of lease land parcels, but by no property description other than the name of the person paying the rent. Or they might be good on receipts and poor on disbursements, and so on. This much can be said for most of them—that an individual who has determined to ferret out the lease land situation in such a town would have some information from which to start.

Only twenty-seven reports could be called "good," and some of these were given the benefit of a doubt. Some, however, were quite good and gave lot numbers and other solid information. It is a pitifully small proportion of the total number of reports.

All this is the more significant when one remembers that the annual town report is a basic source of information in an area in which the general town meeting is the basic governmental procedure. Furthermore, through conversation with town officials, it appears that the nature of the reports reflects only too closely the lack of knowledge prevalent among the town officials respecting lease lands.

Other criticisms of the reports are in order. Out of 246 reports, no more than eighty-seven so much as mentioned revenue or disbursements of money pertaining to the lease lands which were reserved for the benefit of religion. And some of these were wholly inadequate in their in-

formation, making but the barest mention of income or disbursement. Another point of interest is that few of them designated the churches to which the funds went. Ordinarily the selectmen's orders were found to be written in favor of some individual, the reader simply having to assume that such persons were the representatives of some religious congregation.¹⁰⁶ As with the "Gospel" income, so also, the large majority of the reports from the Wentworth towns failed to distinguish the status of the glebe right although this is a mandatory duty of the treasurer.¹⁰⁷

Where town reports carried sufficient data to make possible a cross-check, as, for example, between the treasurer's and the selectmen's reports, it was found frequently that totally inexplicable discrepancies showed up. Confusion also developed at times by virtue of the custom of referring to lease land rents as taxes, and even treating them as such, and in other instances it was about impossible to distinguish between income from lease lands and from other town property.

The reports demonstrated in a glaring way that the leases are not carefully administered.¹⁰⁸ A startlingly large proportion of the reports carried items of back rents due. And in many cases this was no small amount. In fact, a fair number of reports showed as much as \$500.00 or more in uncollected rents. There was clear evidence of uncollected due lease rents in 128 of the 206 reports which in some way showed the existence of lease lands. The delinquencies for the most part ran for from one to six years, although in one case a rental was due since 1938. It is probable that the delinquency list is much greater than 128. The make-up of some reports was such that the inspection of them created an

106. It was interesting to observe, though, how meticulously the selectmen make an even division of the money between the various congregations in a town, in accordance with the requirements of No. 27 of the *Laws of Vermont*, 1868, p. 32. The older system of apportionment in the ratio of church membership was evidently discarded as being too troublesome.

107. *P. L.*, ch. 188, secs. 4338, 4339, 4344. For duties of selectmen and school directors in this respect, see *ibid.*, ch. 188, sec. 4341, and ch. 172, sec. 4177.

108. The Commission on Forest Taxation reported:

The area of the towns as originally set up consisted of about 6½% lease land. The towns covered by this survey have records of lease land of about 3.8% of their area. The records are on the whole very sketchy and income to the towns has been lost as a result. In many cases the towns are collecting rent for parcels, the boundaries of which are unknown. Due to changes in town boundaries by various acts of the legislature, numerous towns are collecting lease rent for lots located in other towns Lease or sequestered land records were rather incomplete but all available information was gathered.

Forest Taxation, pp. 8-9.

impression that the lease rents were not in order. But no certain result was possible, short of an audit of the town books. These were not included in the total of 128. Furthermore, it is fair to assume that delinquencies would be found in at least some of those towns the reports of which were classified as "poor." In the Hancock report, the town auditors took cognizance of the condition:

From our observations there is a marked degree of laxness about collections of accounts due the town The selectmen have rented town property and, to our knowledge, bills for same have not been billed and no account as assets of the town have been submitted to the auditors.

The data secured from the Richford report is presented in the footnote below, approximately as it appeared in the report. The discrepancy between the amount available for religion and that for education is striking and, together with other aspects of the report, goes to show what can be found with respect to town administration of lease lands.¹⁰⁹

109. Treas. Rept.

Lease land—rentals			
General town acct.		102.50	
School acct.		.80	
Summary of income to town			
Lease land rents collected—ministerial		102.50	
Lease land rents collected—school		.80	
Summary of expend.			
Churches from lease land rents		102.50	
Selectmens rept.			
Receipts			
Rents from ministerial lands		102.50	
Orders			
Ministerial land rents		102.50	
Richford Bapt. church	20.50		
Meth. church	20.50		
All Saints Church	20.50		
St. Ann's church	20.50		
E. Richford Bapt. church	20.50		
School directors rept.			
School land rentals		.80	
Aud. rept.			
Assets		1944	1945
Due from rent of school land		242.50	....
Due from rent of ministerial ld.		302.60	....
Due from rent, school land	268.60		
Due from rent, Min. land	251.40		
Est. 75% collectible	520.00		

Nor does the general level of town income from lease lands speak well for the system. With but a few exceptions¹¹⁰ the income derived from issuance of dog licenses was greater than the income from all the public rights in the town. This is a serious commentary when one recalls that the acreage reserved to the towns as public rights was important. The Vermont Educational Commission pointed out “. . . that in the charters of the towns, land aggregating more than a hundred thousand acres, was reserved for the support of the town schools.”¹¹¹ And this was a portion of the several shares which came under town control.

Evidently the present state of affairs is not new. In the 1878 report to the legislature, of the seventeen towns in Bennington County, all but seven reported lands sequestered for religious uses, for a total of 3003 acres and a total rent of \$792.98.¹¹² In the 1882 report no town in the county reported any such sequestered lands.¹¹³ In the earlier report, all towns in Caledonia County, except Kirby, showed religious land with a total acreage of 6583 and a total rent of \$535.81.¹¹⁴ Only five of the county's seventeen towns admitted to having such land in 1882, and the acreage for the county was down to 1328, while the income reported was no more than \$100.29.¹¹⁵

The State Superintendent of Education undertook to present a statistical picture of the condition of education in 1875 and 1876,¹¹⁶ and included was a column of figures titled, “Rent of town school lands.” This appears for each of the two years by county totals, and for 1876, by towns. The data for the two periods do not correlate. For example, the state total for 1875 is given as \$15,165.29 and for 1876 as \$14,193.39.¹¹⁷ Furthermore, there is no comparison possible between the figures presented therein and similar data in the 1878 and 1882 reports in the *Laws of Vermont*.¹¹⁸

School administration in Vermont has very largely been a matter of local government, and this has undoubtedly contributed to the loose

110. *E. g.*, Lemington.

111. Vermont Educational Commission, *Report*, p. 12.

112. *Laws of Vermont*, 1878, p. 297.

113. *Ibid.*, 1882, p. 339.

114. *Ibid.*, 1878, p. 298.

115. *Ibid.*, 1882, p. 340. These examples were selected for comparison at random. The two reports show various other discrepancies as singular as these.

116. *Twenty-Fourth School Report*.

117. *Ibid.*, App., pp. 4, 7.

118. 1878, pp. 296-310; 1882, pp. 338-352.

handling of the school lands. The state has at various times had one or another type of central education office, but it has never wielded any extensive authority. The spirit of localism has been dominant in respect to school organization. The latter has varied from time to time as different experiments were authorized by the legislature. The result is that at present four types of school districts may be encountered: the old simple school districts; incorporated districts, which comprise parts of towns; town districts; and union districts, composed of two or more towns. (Interestingly, only three town reports indicated a distribution of the school rents as between school jurisdictions.) The negative relation of the state to matters of education is further illustrated, in that the *Sixteenth Biennial Report* of the State Board of Education for July 1, 1944 to June 30, 1946, makes no mention of the school lands or income therefrom, and this is found to be the normal thing in the reports from this department.¹¹⁹

The correlation between decentralization of lease land administration and a greater incidence of litigation appears clearly. In one way and another, the lease lands under town jurisdiction have been involved in an impressive number of legal actions which were carried to the state Supreme Court.¹²⁰ The cases cited have been discussed at various points in Chapters IV and V and, so, need no further analysis here. Suffice it

119. It was of interest, too, to find that Mr. Noble, the Commissioner of Education, was unable to tell the writer anything at all respecting lease lands for educational benefit.

120. School lots figured in: *Poultney v. Wells*, 1 Aik. 180 (1826); *Maidstone v. Stevens*, 7 Vt. 487 (1835); *Montpelier v. East Montpelier*, 27 Vt. 704 (1854); *S. C.*, 29 Vt. 12 (1856); *White v. Fuller*, 38 Vt. 193 (1865); *Currier v. Rosebrooks and Brighton*, 48 Vt. 34 (1875); *Lemington v. Stevens*, 48 Vt. 38 (1875); *Churchill v. Capen*, 84 Vt. 104 (1911); *Jones v. Vermont Asbestos Corp., et al.*, 108 Vt. 79 (1936); *Brown v. Derway*, 109 Vt. 37 (1937). The "Gospel" or "ministry" lots were involved in: *Gardner v. Rogers*, 11 Vt. 334 (1839); *Herrick v. Randolph*, 13 Vt. 525 (1841); *Montpelier v. East Montpelier*, 27 Vt. 704 (1854); *S. C.*, 29 Vt. 12 (1856); *Universalist Society, Fletcher v. Leach*, 35 Vt. 108 (1862); *Sterling v. Baldwin*, 42 Vt. 306 (1869); *Lemington v. Stevens*, 48 Vt. 38 (1875); *Spiritual Atheneum Society of West Randolph v. Randolph*, 58 Vt. 192 (1885); *Holton v. Hassam*, 94 Vt. 324 (1920); *Jones v. Vermont Asbestos Corp., et al.*, 108 Vt. 79 (1936). The glebe was at issue in: *Bush v. Whitney*, 1 D. Chip. 369 (1821); *Lampson v. New Haven*, 2 Vt. 14 (1829); *Willard v. Benton*, 57 Vt. 286 (1884); *Brown v. Derway*, 109 Vt. 37 (1937). Mention should also be made of the case of *Selectmen of Manchester v. Barber*, which is described in *Doc. Hist.*, p. 65. The case was an attempt to dispossess the Rev. Daniel Barber of the glebe in that town under the authority of the act of 1794. The action was decided in the United States Circuit Court where it was ruled that the act was unconstitutional and void. No appeal was taken.

to notice two points. One is that the cases, quite generally, involve either the problem of distribution of avails by the selectmen, or efforts to recover from conditions which resulted from weak administration. The other point is that the list of cases includes a fair smattering of actions between individuals respecting such problems as the right to the land, and these would likewise eventuate from careless town administration.

The preceding pages go only so far as to give a suggestion, from available evidence, that all is not well with town administration of lease lands; that the great public asset represented by the various rights of land is not being handled to the best advantage. The evidence presented is fragmentary, but gains in value when it is remembered that, as the Education Commission said, sources from which much was expected, produced so little.

The towns seem to have been satisfied with the state of affairs. During the latter part of the last century, the legislature undertook to provide for better administration of town properties; the program culminating in an act of 1888 establishing a board of three trustees for each town. They were to have charge and management of “. . . all real and personal estate, except United States deposit money, held by any town in trust for any purpose, or any part thereof”¹²¹ This was mandatory on the towns. Later, the arrangement was made optional,¹²² but a considerable number of the towns continued to have such trustees. However, it appears that few of them placed the lease lands in the charge of the trustees, although the acts at no time carried a clause exempting the public rights property. This fact is further significant because the acts have regularly carried a clause requiring that any funds devoted to schools shall be reported annually by the trustees to the state office of education.

FIRST SETTLED MINISTER LANDS

The right for the first settled minister stands apart, in some respects, from the other public rights. First and foremost as a distinction, it is the only one of the public rights which was regarded in Vermont as being subject to alienation by the passing of a title in fee simple.¹²³ Actu-

121. *Laws of Vermont*, 1888, pp. 52-53.

122. *P. L.*, ch. 146, sec. 3541.

123. See *Dow v. Hinesburgh*, 2 Aik. 18 (1826); *Charleston v. Allen*, 6 Vt. 633 (1834); *Williams v. Goddard*, 8 Vt. 492 (1836); *Williams v. North Hero*, 46 Vt. 301 (1873); *Capen's Admr. v. Sheldon*, 78 Vt. 39 (1905); *Brown v. Derryway*, 109 Vt. 37 (1937), for confirmations of this doctrine. The decision in *Williams v. Goddard* is the only exception, either in the opinions of the Vermont

ally, it can be said that this right finds a place in a twentieth-century study of the lease lands only by default. That is, the right persists today as public land by virtue of there never having been a ministerial settlement in some towns. If it had been otherwise, the parcels reserved to this right would all have become private property without distinguishing characteristics.¹²⁴

An additional difference is that this is the one right which was steadily omitted from the practice of durable leasing, until 1867. The legislature provided, by various acts, for administration of such lots where no minister had acquired them.¹²⁵ In all such cases the legislation contained a restriction that leases should not be for terms longer than five years, or until a minister should settle. Briefly, the provisions have been to place the responsibility for the unsettled lots on the selectmen of towns and on the county treasurers for those places which were unorganized. In either case, the avails were specified to be used for educational or religious benefit. It may be added that the quantity of land reserved for this right was important. The right for the first settled minister and the right for town schools are the only ones which ran through both the Wentworth and Vermont charters.

Two other points can be noted respecting the right here under consideration. The first is that it has been the subject of more Vermont Supreme Court opinions than any other single right. The other is that there is less known about the outcome of the reservation, and it would probably be more difficult to track down than any of the other public shares.

court, or in legislation. Even there, the court limited the restriction to charters phrased as was that of Concord. The doctrine has been that not only did the fee pass to the minister, but that it was absolute, and hence permanent even though he should afterward break his connection with the church.

124. There is one other exception. In some instances all, or a part of, the right was deeded back by the minister for the support of religious practice, either voluntarily or by demand of the town. It appears that a fair number of towns insisted that the minister take only a portion of the right, the remainder going to the towns. Although this seems to have been accomplished practically, its legality is questionable in view of the court's views that the right automatically lay in the minister upon the completion of his settlement. One town carried out a novel program for assuring continued religious leadership. Upon the settlement only twenty-five acres of the right went to the minister; twenty-five acres more was to go to him each time he made a subsequent five-year renewal of his contract. Hemenway, II, 104-105.

125. *Laws of Vermont*, 1798, pp. 17-19; *ibid.*, 1835-1837, 1835, pp. 147-148; *ibid.*, 1849-1851, 1851, pp. 141-142, 143; *ibid.*, 1867, p. 57. *P. L.*, ch. 146, sec. 3536. Such lands in gores and unorganized towns are still limited by the five-year lease term provision. *P. L.*, ch. 145, sec. 3376.

The last assertion is equally applicable to those lots which were acquired by ministers and those which have remained in public control.¹²⁶ As to the latter, one finds no distinction of this share in the town reports. The income from it is simply lumped with that from the other public rights, the benefit of which goes to the schools or churches.

Generally, it is probably safe to say that the majority of those lots which were taken up by ministers were ultimately conveyed, either by sale or inheritance, and passed into the mass of private real estate.¹²⁷ This is not universally true, however. One type of conclusion is exhibited by the recital of facts in *Gardner v. Rogers*,¹²⁸ and *Congregational Society, Newport v. Walker*,¹²⁹ in which the minister deeded voluntarily all, or a part of the right, for the continued support of religious worship. The right seems, besides, to have endured a variety of other experiences. During this research, the writer was regaled with yarns about this right by individuals apparently conversant with Vermont local history. Such information could not be verified, or documented, within the limits of this study, and so is not presented in any great detail even though some of it had the appearance of solid foundation.¹³⁰

A more extended study, however, would do well to investigate such tales in terms of the problem of the lease lands as an instrument of public policy. Of all the various rights reserved, this one was most directly and immediately designed to produce the desired result. Here was a reservation of land, in principle as extensive as any holding in the town—somewhere around 300 acres on the average—free for the taking, and to become the possession of a minister simply by his settlement in the town. He might either farm it, in addition to his ministerial duties, or he could lease or rent it and collect the avails, or he could sell it and realize the market value. When one considers the well-known low level of income of men of the cloth at that early time, this would seem to be an irresistible inducement. And certainly the duties of the church would not be over-

126. The fates of some, of course, are more available because of having been determined by the court.

127. So long as the land remained in the possession of the minister and he retained the pastoral charge of the church and congregation over which he was settled, the land continued to be considered as sequestered to a pious use and free from taxes. *Laws of Vermont, 1811-1814*, 1814, pp. 82-83.

128. 11 Vt. 334 (1839).

129. 18 Vt. 600 (1846).

130. One of the writer's informants was Mr. George Hyde, Historian of Towns of the Works Progress Administration Historical Records Survey. Another was the Rev. Samuel Bean, in charge of the church records section of the Survey.

whelming in those small, sparsely settled communities; whereas, the opportunity to do good would be great.

The record of litigation respecting this right, the difficulty, or impossibility, of securing ministers in some towns, and finally the tales told of other situations raise a serious question as to how well the purpose of the reservation was served. It may be said that among those people interviewed, both lay individuals and church folk, the general attitude displayed respecting the record of this right was not favorable. As an example of the sort of stories which are passed along, the writer was told of one town in which a minister was duly settled in the church, whereupon the entire congregation surrounded him and marched him to the town clerk's office, holding him there until he deeded the right back to the town. Other tales relate cases in which ministers secured legal title and then departed. The most extreme story, told by a reliable individual, related the activities of a minister who moved through the state and was not caught up with until after he had secured seven rights in as many towns.

To add to the sense of verity of the stories received verbally, the pages of Hemenway contain various accounts of doings, respecting the right for the first settled minister, some of which are quite as lurid as those told to the writer.¹³¹ The Mendon incident deserves notice equally with the last tale above. Here the townspeople were determined to retain the right. They made a fictitious arrangement with a minister from another place to come there and go through the forms of settlement. He then deeded the land to the town and departed for his home. After that the town hired *bona fide* a minister, secure in the knowlege that legally, at least, he could not lay claim to the right.¹³²

There were, undoubtedly, cases in which the right quietly served its purpose in a legitimate way. The record of the cases in the *Vermont Reports*, however, goes to support the proposition, advanced by the local historians, that the right was the object of greed and other adverse influences.

Passing on from the earthy problems created by some ministers and some towns, the law is found to have been confronted with issues re-

131. *E. g.*, Bakersfield, II, 104-107; Barnet, I, 290; Bradford, II, 820-821; Fairfax, II, 170; Lyndon, I, 344-345; Mendon, III, 787; Monkton, I, 162; Ryegate, I, 379; Salisbury, I, 88-90; Thetford, II, 1093-1094.

132. This is the property which later figured in *Daggett v. Mendon*, 64 Vt. 323 (1892); and *Capen's Admr. v. Sheldon*, 78 Vt. 39 (1905).

specting the operation of this reservation.¹³³ Besides those already observed in Chapters IV and V, two principal matters have required considerable attention. One has been the procedure by which it should be determined that a minister was duly settled so as to become eligible to possess the land. The other has been the determination of what constituted a proper religious group, and hence the "minister" thereof, in the meaning of the reservation. Both of these have been thorny questions in Vermont—undoubtedly much more so than in those New England states which were settled earlier and under different conditions. A little thought on the matter will show that this right was best designed for the earlier conditions under which settlement of a community was apt to be accomplished by a cohesive, single, homogeneous religious group; the time when the civil town and the religious parish were intermingled in men's minds and in social operations; and the time before Protestantism became so highly fragmented into incompatible and competing sects.

By the time when much of Vermont was settled, these conditions no longer prevailed. Towns would be settled by individual families, unrelated and unacquainted with each other, and holding no common religious background. Consequently, one might find more than one religious group becoming organized contemporaneously. Or it might be that the first religious group to obtain a minister would represent but a minority of the town. Other situations are conceivable, all equally difficult of solution, where there was a reservation for but one minister and that, the first one.

133. As to the court, see: *Evarts v. Dunton, et al.*, Brayt. 67 (1817); *S. C.*, Brayt. 70 (1820); *Poultney v. Wells*, 1 Aik. 180 (1826); *Sheldon v. Goodsel*, 1 Aik. 225 (1826); *Dow v. Hinesburgh*, 1 Aik. 35 (1825); *S. C.*, 2 Aik. 18 (1826); *Charleston v. Allen*, 6 Vt. 633 (1834); *Williams v. Goddard*, 8 Vt. 492 (1836); *Gardner, et al. v. Rogers, et al.*, 11 Vt. 334 (1839); *Herrick v. Randolph*, 13 Vt. 525 (1841); *Pownal v. Myers*, 16 Vt. 408 (1844); *Congregational Society, Newport v. Walker*, 18 Vt. 600 (1846); *Brown v. Edson and Plymouth*, 23 Vt. 435 (1851); *Montpelier v. East Montpelier*, 27 Vt. 704 (1854); *S. C.*, 29 Vt. 12 (1856); *Colchester v. Culver, et al.*, 29 Vt. 111 (1856); *Universalist Society, Fletcher v. Leach*, 35 Vt. 108 (1862); *Perkins, Admr. v. Blood*, 36 Vt. 273 (1863); *Victory v. Wells*, 39 Vt. 488 (1866); *Sterling v. Baldwin, Exr.*, 42 Vt. 306 (1869); *Williams v. North Hero*, 46 Vt. 301 (1873); *Lemington v. Stevens*, 48 Vt. 38 (1875); *Daggett v. Mendon*, 64 Vt. 323 (1892); *Capen's Admr. v. Sheldon*, 78 Vt. 39 (1905); *Brown v. Derway*, 109 Vt. 37 (1937). There was also a case, *Pierce Burton v. Ira Baxter*, referred to in *Dow v. Hinesburgh, op. cit.*, as having been tried "two or three years before," but not recorded in the *Reports*. Another unreported case was *Williams v. Hardy and Barker*, determined in 1821, and discussed at some length in *Williams v. Goddard, op. cit.*

The issue of due settlement has appeared in a number of cases.¹³⁴ The earlier position of the court, based on existing legislative propositions, was that the procedure required specific action by both the town and the congregation. The former, in town meeting, must express itself by majority vote as regarding the minister in question as settled. The latter must install the minister with all due form and ceremony as laid down in the canons or practices of the church in question, and there must be adequate evidence of this presented to the town. The North Hero case considered that the legislative requirements had changed so that the town in its municipal capacity was no longer concerned; the inhabitants in their social capacity were involved, and this could mean, on occasion, but a minority of the town.¹³⁵ This view was based on interpretation of the statute of 1797¹³⁶ which the court held: “. . . made an end of any action by towns as such, and of any municipal corporate function in the matter of public worship, and of the settlement and support of ministers. The whole matter was left to associations to be formed under that statute.”¹³⁷

Besides these requirements, the court gradually provided others. *Sheldon v. Goodsel* was important because it established the position that the settlement must be on a permanent basis.¹³⁸ The opinion excluded from the benefit of the reservation ministers of churches in which the higher church authority assigns pastorates, as in the Episcopal Church, and itinerant missionaries. *Dow v. Hinesburgh* emphasized the requirement that the minister must be ordained to assure that he will be one who is personally qualified to minister to the community.¹³⁹ In *Gardner v. Rogers* the court felt that the individual must be pastor to an established recognizable religious group, not just to a casual assemblage of people.¹⁴⁰ The North Hero case, by a broad application, extended this

134. *Sheldon v. Goodsel*, 1 Aik. 225 (1826); *Dow v. Hinesburgh*, 2 Aik. 18 (1826); *Charleston v. Allen*, 6 Vt. 633 (1834); *Williams v. Goddard*, 8 Vt. 492 (1836); *Gardner v. Rogers*, 11 Vt. 334 (1839); *Williams v. North Hero*, 46 Vt. 301 (1873).

135. 46 Vt. 301 (1873). In fact, in that particular situation the settlement had been accomplished by a congregation of but three persons.

136. *Laws of the State of Vermont, Revised* (1797), pp. 474-479.

137. 46 Vt. 301, 316 (1873).

138. 1 Aik. 225 (1826). This was stressed in all later cases which considered the point.

139. 2 Aik. 18 (1826).

140. 11 Vt. 334 (1839). This point was made specifically in relation to distribution of avails of the “Gospel” right, but in such a way as to bear on the matter here being examined.

idea to eliminate any sort of pseudo-minister. Here, one of the ministers in question (one Eaton) had had credentials as a Methodist clergyman and then surrendered them. Later, he organized an Independent Church and preached to it for several years, although he did not officially become a member of it. The court threw out his claim to eligibility and held that a man must be a properly recognized minister. It can be seen that this is an extreme restriction, in view of the fact that Eaton was preaching to an organized congregation.¹⁴¹

The problem of defining a religious congregation is applicable both to the disposition of this right and to the distribution of avails of the Gospel right. The court has simply accepted the provisions of legislative enactments as definitive. In respect to the operation of such provisions we have seen that the court has been loathe to interfere with the discretionary function of the selectmen. It is probable that the court has regarded this matter as one best left to local neighborhood solution. With the great variety of sects which developed, it would have been nearly impossible to frame an adequate definition of a church, or even of religious observance. Hence, by allowing broad lee-way, each community could arrive at a conclusion satisfactory to the majority of its members. Such a policy, it would seem, would probably tend most nearly to accomplishing the purpose of these two reservations.

GENERAL EVALUATION OF ADMINISTRATION

Incomplete though the evidential material is upon which the analysis of this chapter rests, the inference is available that the land reserved by the town charters has not been administered to the best advantage by the grantees of the various public rights. As Edward Conant suggested,¹⁴² it might be expected that the donor of so great a gift should take an interest in the handling of it. It is apparent that the principal effort of the judiciary has been toward maintaining the *status quo* of the rights and protecting the lands thereof from encroachments. We have seen that the legislative branch has failed to appreciate the problem or to provide any systematic control or supervision. Its activities have been lacking in

141. 46 Vt. 301 (1873). There is to be taken into account the fact that both the referee in the case and the court thought that Eaton was really interested only in gaining possession of the land, rather than in conducting a legitimate ministry. However, the doctrinal position is expressed so as to permit the court to apply the exclusion at will.

142. *Supra*, p. 289, n. 86.

foresight, have been piecemeal, and have frequently been ill-advised in the eyes of the judges.

There remains the state administrative establishment to be examined. Some suggestion of its role, or lack of one, has been offered in earlier chapters. It can be asserted specifically that the administration has displayed no more active or constructive concern respecting the outcome of this vast subsidy than characterizes the response of the other branches of the state government. Here and there occasional effort is displayed, as in the interest shown by Mr. Harvey when he was Commissioner of Taxes. But this can be evaluated entirely as a personalized interest, not a continuing concern of the office or agency. And such instances of interest have produced no tangible results. They are on a par with the infrequent concern displayed from time to time by individual legislators.

It has already been described how the writer found little or no help to be had from interviews with administrative officers at the state capitol despite their desire to be of assistance. In fact, an inverse situation has more recently existed since this study progressed beyond its initial stages. The writer has been queried by some of the very agencies from which he had originally hoped to secure information.

This condition is substantiated by an inspection of administrative reports from state agencies. A careful and extensive search was made through such publications as might perchance have occasion to refer to the lease lands in one connection or another.¹⁴³ In fact, the coverage

143. *Eighth Biennial Report of the State Board of Education, July 1, 1928 to June 30, 1930* (Rutland, 1930); *Fourteenth Biennial Report of the State Board of Education, July 1, 1940 to June 30, 1942* (Brattleboro, 1942); *Sixteenth Biennial Report of the State Board of Education, July 1, 1944 to June 30, 1946* [n. p., n. d.]; *Vermont Tax News: A Bulletin Issued by the Commissioner of Taxes* (Montpelier, 1940); *Biennial Report of the Commissioner of Taxes of the State of Vermont for the Term Ending June 30, 1938* (Rutland, [n. d.]); *Biennial Report of the Commissioner of Taxes of the State of Vermont for the Term Ending June 30, 1942* [n. p., n. d.]; *Biennial Report of the Commissioner of Taxes of the State of Vermont for the Term Ending June 30, 1944* [n. p., n. d.]; *Biennial Report of the Commissioner of Taxes of the State of Vermont for the Term Ending June 30, 1946* (Montpelier, [n. d.]); *Report of Finances as of June 30, 1944* [n. p., n. d.]; *Vermont Government, Report of the Commission on State Government and Finance Acting under the Authorization of Joint Resolutions Nos. 259 and 281 of the Legislature of 1945* [n. p., n. d.]; *Biennial Report of the Treasurer and Auditor of Accounts to the General Assembly of the State of Vermont. For the two years ending June 30, 1946* [n. p., n. d.]; Robert M. Carter, *The Development and Financing of Local Governmental Institutions in Nine Vermont Towns*. Agricultural Experiment Station, University of Vermont and State Agricultural College, *Bulletin 529* (Burlington, 1946); *First Report of the Public Records Commission to the Gen-*

was broader than necessary in order to make certain that no chance was missed. Recognition, in such publications, of the existence of this vast institutionalized acreage of the state's land area was meagre indeed.

The extent of the administrative indifference is well illustrated by noticing some of the titles cited. The study by the Vermont State Planning Board on *Financial Statistics: Vermont Towns and Cities* is no minor, limited affair. It runs to 267 large pages closely packed with charted data. Yet there is no mention of the lease lands as a source of revenue, as an asset, or as a problem. Neither is there in the pamphlet titled, *Important Matters Before the State Legislature*. Of the four reports cited from the Commissioner of Taxes only that for 1938 in any way touches on the lands, and this only indirectly in a short excoriating paragraph respecting tax exemptions of all sorts.

The Vermont State Planning Board's *Report on Survey of Unorganized Towns and Gores* barely qualifies: the prescribed duties of the county treasurer and the board of appraisers are recited, and in a statistical table of land data covering the local jurisdictions of Essex County, there is a column of acreages of "Leased Land."¹⁴⁴ The *Report of the Commission on State Government and Finance* is deeply concerned about tax exemptions and their influence on the sources of revenue of local governments.¹⁴⁵ But it dwells on exemptions accorded business and fraternal organizations and says no word respecting the hundreds of thousands of acres of exempt lease lands.¹⁴⁶

The report on the University of Vermont¹⁴⁷ may be regarded in this instance as a state report as the examination of the institution's finances occurred pursuant to an act of the special legislative session of Septem-

eral Assembly of the State of Vermont ([n. p.], 1944); *Biennial Report, 1946, of the Public Records Commission to the General Assembly of the State of Vermont* [n. p., n. d.]; *Important Matters Before the State Legislature: A Report of the Fourteenth Meeting of the Rural Policy Committee*. Agricultural Extension Service, University of Vermont and State Agricultural College (mimeographed, Burlington, 1947); *Charts of Financial Statistics: Vermont Towns and Cities Fiscal Years 1932-1941 Inclusive*. Vermont State Planning Board (Montpelier, 1942); *Report on Survey of Unorganized Towns and Gores*. Vermont State Planning Board ([n. p.], 1943); *University of Vermont and State Agricultural College, Examination as at June 30, 1942* [n. p., n. d.]; *First Biennial Report of the Vermont Judicial Council* ([n. p.], 1947).

144. Pp. 5, 7; insert sheet, p. 31.

145. Pp. 32-34.

146. Nor did the 1908 Commission on Taxation mention the lease lands.

147. *University of Vermont and State Agricultural College, Examination as at June 30, 1942*. Hereafter cited as *U. V. M.: Examination*.

ber, 1941.¹⁴⁸ Among other addressees is the Governor, and the letter of transmittal is signed by the State Auditor. It was intended to be complete and exhaustive, coming at a time of some crisis in the financial position of the University. There are several brief references to leased land accounts, but nowhere is there any breakdown as between such land which is of the public rights and other leased University holdings. Under the heading "accounts receivable, less reserves," book value of "Leased land rentals" is set at \$2,669.07, reserve¹⁴⁹ at \$1,780.12, and net at \$888.95.¹⁵⁰ The second reference shows that the reserve item increased during the year 1941-1942 by \$202.39.¹⁵¹ In the next reference, there is this item:

The results of requests we made by mail for confirmation of accounts receivable are as follows:¹⁵²

No. of requests	No. of replies	% of replies	\$ value of requests	\$ value of replies
29	5	17.2	\$1,751.61	\$302.05

In the schedule on endowment funds there appears an addition to "Leased Land Fund" of \$150.00,¹⁵³ and in "Details of Investments," "College Leased Lands" are given a book value of \$100,000.¹⁵⁴ In the appendix titled, "Details of Income," "Leased Land" is credited at \$4,151.48¹⁵⁵ and "Leased Land Stumpage" at \$300.00. In the final reference, under "Details of Expense," "University Lands" are charged for \$708.38.¹⁵⁶ Although the early section of the report consists of a lengthy and detailed commentary on numerous matters of University administration, no remarks are made respecting the lands.

Mr. Carter's study of use of land in nine Vermont towns is the only item which can be said to take effective account of the lease lands. In it he briefly explains something of the system and then relates the land revenue, in a generalized way, to the school tax income.¹⁵⁷

148. *Laws of Vermont*, 1943 and *Special Session*, 1941, pp. 289-290.

149. It would appear that this classification covers those accounts receivable which were doubtful of collection.

150. *U. V. M.: Examination*, p. 4.

151. *Ibid.*, p. 5.

152. *Ibid.*

153. *Ibid.*, Schedule A-5.

154. *Ibid.*, App. 3, p. 22.

155. *Ibid.*, App. 7, p. 3. The size of this figure indicates strongly that the item "Leased Lands" includes other holdings besides the public rights.

156. *Ibid.*, App. 8.

157. Carter, *The People and Their Use of Land in Nine Vermont Towns*, pp. 13-14, 42.

To this resume of the results obtained from governmental publications, it may be added that in only two offices was there found to be any data respecting the lease lands. The office of the Commissioner of Taxes had on file the returns from the towns of quadrennial appraisals.¹⁵⁸ The office of the State Forester contained some information respecting those lease lands included in the State Forest.

158. It will be recalled that this material was evaluated in Chapter III.

Chapter VIII

CONCLUSIONS

It will have been gathered, from a variety of comments in preceding chapters, that the writer is not enthusiastic about the lease land system as a public institution. Despite the lack of complete data, enough has been developed in this research to lead to the conclusion that the system embodies serious defects. Indeed, the reasons for the inability to complete the study are in themselves an influence toward that conclusion.

The system was approached as being a technique of subsidy, and there has been the intention to discover what result accrued.

We may assume the validity of the view, held by those who issued the charters, that it would further the development of the area if there were inducements offered to aid the establishment of religious and educational institutions. In an aside, the writer earlier questioned this point. However, it is not an issue of this study and may be accepted here.

With such an assumption, the original reservation of the public rights can be justified. There was land aplenty to be granted; there was not money on hand for subsidies.¹

One cannot equally readily justify the erection of a system, on those grants, which is characterized by a stubborn inflexibility—an inability to adjust to changed conditions and needs. Under the Anglo-American doctrines of the law which so zealously protect property rights, it is likely that any subsidy by land grant could exhibit a tendency toward rigidity. The extreme character of the Vermont system, however, is to be credited to the early locally accepted practices and doctrines. One cannot resist the conclusion that the custom and law in New Hampshire were more to be approved. There, it was possible to utilize the available asset of the land in the early period without that use persisting and finally becoming a burden on the economy of the later social structure.

1. The subsidy principle is still alive in Vermont. In the town reports for 1946 there were found to be three towns which had as an item, in the warning for the town meeting, to see if the town would vote money as a stipend to induce a doctor to settle in the town.

The position taken here is not unique. Those persons at all familiar with the lease lands invariably expressed the attitude that the system at present is disadvantageous.² An individual responsible for administering one large share of lease lands said to the writer that he wished seriously that the lands could be disposed of. He wistfully advanced the proposition that the state buy the lands from the various grantees and deal with the tenants. It was conceded quite generally that the system has outlived its usefulness and is now a liability.

It may be asserted that, as the system has developed, the principal beneficiaries of the grants have come to be the tenants. The present differential between the general run of lease rent figures and tax rates for equivalent property is the basis for this conclusion. The practice in the early days, during which most of the perpetual leases were granted, was to set a rate of rent per acre slightly below the then tax rate. This was done as inducement to settlers to take leases rather than to acquire property in fee. The leases are perpetual; thus, the rental figure is constant and unchangeable. Taxes, on the other hand, have exhibited the same tendency in Vermont as elsewhere—a steady and almost continuous rise. So that by today there is a wide disparity. The various leases examined, and other data encountered, indicate that, as a general average, lease rents were set at from ten cents to seventeen cents per acre.³ Curiously, where there has been occasion to make renewals, or new leases, the tendency on the part of most of the trustees has been to continue the original rental rate rather than adjusting it upward in line with more recent tax levels. The disparity is demonstrated by tax figures developed by the United States Department of Agriculture. The average real estate tax per acre in Vermont was shown as follows⁴:

1935	1940	1944	1946
.45	.53	.57	.62

2. The report of the Commission on Forest Taxation said: "Serious consideration should be given to this problem by the legislature with a view to correcting such an anachronism." And in its summary of conclusions: "Legislation should be enacted to place Sequestered Lands on the tax books." *Forest Taxation*, pp. 9, 21.

3. The Commission on Forest Taxation arrived at a somewhat lower figure: "Available figures showed that 47,109 acres paid an annual rent of \$4,653.91 or \$.099 per acre. The highest per acre rent was \$.727 and the lowest was one barley corn for 340 acres." *Ibid.*, p. 8.

4. United States Department of Agriculture, Bureau of Agricultural Economics, *Farm Real Estate Taxes in 1946* (Washington, 1946), p. 4.

Another generalization of the tax figure gave, for 1940, .55 per acre for all farms operated by owners, regardless of additional land owned.⁵ And the *Statistical Abstract of the United States*, 1941, gave a figure of .54 for 1939.⁶ These figures refer primarily to farm holdings and thus are directly comparable to the figures suggested as representing average lease rent rates.

As to forest taxation, any generalized figure would be difficult and relatively meaningless. Vermont law on this matter is complex, including classification by tree growth status, various exemptions, and so on. The summaries presented by the Commission on Forest Taxation ranged from .09 per acre to .60 per acre, with the great majority of towns ranging between .14 and .30 per acre.⁷ One point became certain from examination of the assorted records of various groups of lease lands. It is that the system developed in Vermont, of perpetual leases of the public lands, never proved workable or satisfactory as an income device in the case of parcels which are essentially forest land.⁸

It is in this class of land where the difficulties arose with respect to commuted rents. The comment of the Commission respecting the interest of the towns is really applicable, too, to the interest of the trustees. It is the impression of the writer that it is the forest acreage in which the greatest losses of benefit to the trusts have occurred. These parcels have been the most inaccessible, the most difficult for the grantees to locate and to control. Mr. MacFarland's comments about cutting of timber illustrate the situation. Correspondence in the S. P. G. files, their records, and verbal statements by Mr. Joseph Wilson support the position. Another difficulty which never received satisfactory treatment was that presented by the issue of stripping versus harvesting of timber, in relation to a durable lease with a low annual rental rate. This is what induced the attempted solution by way of commuted rents.

The contrasts which have been presented above are the normal pattern. It is clear that the tax structure of Vermont is carrying a substantial

5. United States Department of Commerce, Bureau of the Census, Sixteenth Census of the United States, 1940. *Agriculture* (Washington, 1942), vol. I, pt. 1, Vermont, State Table 6, p. 81.

6. United States Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States*, 1941, sixty-third number (Washington, 1942), p. 694.

7. *Forest Taxation*, pp. 22-24.

8. The Commission on Forest Taxation said: "It would be of great benefit to most towns to be able to terminate these leases and get this property onto the tax lists." *Ibid.*, p. 8.

burden of exempted property in terms of the total acreage of the lease lands.⁹ Even in the case of those public shares, the avails of which go to town educational purposes, there is a loss, to be measured between the rate of rent and the going rate of taxation. Inasmuch as real property taxation is the major source of revenue of the towns, the matter is serious. And it becomes the more so for those towns suffering a low revenue due to lack of development.

The extremity to which disparities can go, and the inflexibility of the system, are illustrated in the case of a lot pertaining to the University which lies in the central section of the City of Barre. A survey by the City Engineer showed the lot to contain 133.77 acres, of which there was private occupancy of 96.89 acres, the remainder going to streets and rivers. There are over 200 tenants, including 150 or more dwellings, several large granite sheds, manufacturing plants and other business firms. The original lease, still effective, was made in 1801 for an annual rental of \$17.00. At present the largest single occupancy is 20.75 acres for an annual rental of \$3.53. The City Attorney conferred with the University with a view to purchasing the land, which the city valued at \$100,000 or more, exclusive of betterments.¹⁰ It was reported by Mr. MacFarland that a sale was not feasible. Mr. Joseph Wilson showed the writer data on a situation as extreme, which prevails in Burlington with respect to an S. P. G. lot.

Another situation, which may be found with some frequency, is in respect to lease lots which have come to be desirable resort sites. Wooded lake shores include pieces which in the early days would simply have been relatively inaccessible and undesirable farm spots. Hence, one finds lease land parcels well represented. Now, such places are much-sought-after scenic locations for summer homes. But, for the most part, the old lease rentals are effective. Unfortunately, this situation is most apt to be frequent in those parts of the state where local government revenue conditions are most disturbing and the rent differential has the greatest consequence.

An inescapable conclusion is that the system has resulted in a variety of inequitable conditions, difficult to condone in terms of the present day.

9. There are other significant segments of property enjoying exemptions, which go to increase the seriousness of the matter.

10. These statements are taken from Mr. MacFarland's report, "Lease Lands," I, 96-102. At the time of the report, no rent had been paid for fifteen years, nor, of course, were any taxes being paid. The report includes an addendum that rent in arrears and interest thereon was paid March 14, 1923 in the sum of \$408.20.

One, of course, is the situation just described by which some individuals carry a heavier burden on the use of real property than do others who happen to have acquired lease rights to public lands. The situation through which approximately a half of the towns contribute to the income of the University through tax exemption, whereas the remaining towns do not, cannot be admired. Perhaps an even more undesirable situation is the similar one, resulting from the grants of the grammar school rights, whereby towns, to a various number, involuntarily contribute in this same way to the upkeep of a secondary school in some other town.¹¹ And, of course, there is the condition, sometimes a result of town line changes, whereby a town enjoys revenue from land in another town. Finally, it would seem difficult to justify the great landholding of the Episcopal Church in Vermont, comparing that with the religious benefits to other sects, on the one hand, and contrasting the definite minority position of the Episcopalians in relation to the numbers of other communicants, on the other hand.

Much has been said of the inadequate manner in which the reservations of the public rights have been administered. This commenced with the doings of the legislature.¹² Nor could the administration carried on by the various grantees be complimented.

Something should, however, be offered in extenuation of the latter condition. It cannot be said that the trustees of the public rights have distinguished themselves by careful and diligent stewardship of the lands granted to them. But, it would have been a difficult business, with the best of intentions and effort. During the early period, when administrative habits were developed, the area of Vermont included much land that was highly inaccessible—exceedingly difficult of control. To this was added the factor of low values of realty at that time, particularly with respect to timberland. Early writing, such as that in the manuscript records of boards, shows clearly that in those days the future develop-

11. Parenthetically, it is to be noticed that several of the grammar schools and academies which appear to have been substantial beneficiaries of the grammar school rights were situated in Wentworth towns, which, of course, possessed no such land of their own. *E. g.*, Peacham Academy and Thetford Academy.

12. The legislature's fault has been noted by the court:

The reservations and appropriations were for general classes and purposes. The special details of provision, obviously, were not settled and adopted with sharpness of attention to the terms used, or with cautious consideration of the possible questions that the course of events thereafter, in the progress of population and society, might give rise to.

Williams v. North Hero, 46 Vt. 301, 319 (1873).

ment was not conceived of, and it was thought that any return gained from such acreage was just so much to the good.

Later on, another factor militating against sound administration exerted an influence. This was the way in which towns were divided into severalty, ordinarily through from three to five divisions. Thus, a public right would have a share broken into as many different parcels within a town. In the making of leases, collection of rent, and so on, the share within a town required just that many different efforts, even to begin with.

This fragmentation was increased through the customs of conveying by the tenants which developed. Two opposite effects are to be found, both adding to the difficulty of administration. One was that whereby, in the course of time, a large farm holding would be put together—most of it consisting of ordinary realty, but including one or more parcels of lease land, undefined somewhere within the farm. The other effect took place when the course of transactions would divide a parcel of lease land between two or more subsequent holders. And, of course, these two tendencies could go together so that what had once been a single, relatively well-defined parcel could conclude by being several parcels, each obscured within a larger holding. All of these conditions, together with the low rate of lease-rents, has meant a high cost of administration, relative to the revenue secured. One finds this admitted, by implication and sometimes explicitly, in the various land records.

The writer has read letters in which land agents quite frankly stated that it was not worth the possible return to go to the effort necessary to clear up some land situations. And from the viewpoint of the trustees, this would in turn cause them to favor the amateur, and “inexpensive,” administration which has been characteristic. Furthermore, as to fragmentation, it is to be kept in mind that although the total lease land acreage is of large consequence in the state, that total is broken down into various grants so that only the University and Diocese possess holdings extensive as single units.¹³

It still remains, however, that the state as the grantor of this great

13. This point would seem to justify the proposition related earlier in this chapter, made by a land agent, that the state take over all the lease lands and administer them. They would then constitute a holding large enough to justify organized administration.

land asset, and the grantees, appear to have been remarkably casual with respect to it, once the grants were concluded.

Despite the legislation of 1937, the lease lands continue as a public problem. That act has not proven widely useful. From what could be obtained, information clearly points to the inference that few conveyances have been consummated under its authority.¹⁴ It could hardly have been otherwise. A few situations can be thought of, such as that of the asbestos mine in Belvidere and the public forest developments, in which there would be an effective desire to acquire the fee of the lands. It is further to be conceded that some individual tenants might be among those people who are urgently motivated by a desire to own the land. Other than such, however, there is no incentive to buy. The act offers a general advantage only to the sellers—the present trustees. Whoever buys commences to pay taxes. These would invariably be higher than the lease rent. If the tenant buys, he simply makes this undesirable change of economic status. If a third party should buy, he must buy subject to the outstanding lease right. Consequently, he would suffer a net loss, receiving from his perpetual tenant the lease rent and paying out more than that in taxes.

The lease lands still generate occasional interest as a problem. In the 1945 session of the legislature a joint resolution, House Bill No. 9, was introduced and referred to committee with the purpose of consideration of the lease lands. The terms of the resolution follow so closely the findings and conclusions herein that it is reproduced in full:

J. R. H. 9. Joint resolution relating to investigation of lease lands;

Whereas, there exists in many of the towns of the state certain lands known and described by the term lease land, and,

Whereas, some of this land is set aside for the support of the gospel, some for the support of the town schools, some for the support of colleges and higher institutions of learning, and some for other purposes, and,

Whereas, towns are permitted to tax only the improvements on this land, and so far as the land itself is concerned, the only income derived therefrom for the purposes aforesaid is a mere nominal consideration known as lease rent, and said land does not bear its fail [sic] and proportionate burden of taxation, with other lands of like nature and condition, not so classified, now Therefore Be It Resolved by the Senate and House of Representatives:

14. It was related earlier how little impression the act has made, even on those concerned with the lease lands.

That a committee consisting of two Senators to be appointed by the presiding officer of the Senate, and three representatives to be appointed by the presiding officer of the House be appointed to study the above situation pertaining to said "lease lands" and report to the 1947 legislature the advisability or propriety of legislation to correct said inequality;

Which was read and referred to the Committee on Judiciary.

The Judiciary Committee appealed to the Attorney General, Mr. Alban J. Parker, for advice, as a result of which, presumably, the bill was reported adversely and killed. Mr. Parker's advisory opinion is found in his biennial report.¹⁵ He was pessimistic on the possibility of anything much being done, basing his attitude on the view that, ". . . the rights involved in this question are fundamentally property rights residing in the person who is the owner of the leasehold interests." He referred to the rulings in *Caledonia County Grammar School v. Burt*,¹⁶ *Herrick v. Randolph*,¹⁷ and the *Asbestos Case*.¹⁸ He coincided with the present writer's view that the right to buy would not be attractive, with the land thus stripped of its tax exemption.¹⁹ His conclusion is quoted in full:

It thus follows that the property rights which vest in the holders of the leasehold rights in all of these lease lands can only be divested by condemnation proceedings. In making this statement I do not intend to convey the impression [that] under certain circumstances these property rights in the leasehold lands might not be conveyed in fee. Such, however, contemplates that the conveyance must be made with the full consent of the owner of these rights.²⁰

It is the opinion of the present writer that the Attorney General was unduly summary in his treatment of the inquiry and might well have offered the committee more positive advice. The letter of inquiry from

15. *Biennial Report of the Attorney General, For the Two Years Ending June 30, 1946* (Burlington, [n. d.]), pp. 161-162. The opinion quoted from the letter of inquiry from the committee. The latter contains an interesting example of the way in which terminology is confused. It refers to the "status of Lease or Glebe lands."

16. 11 Vt. 632 (1839).

17. 13 Vt. 525 (1841).

18. 108 Vt. 79 (1936).

19. Oddly, the Attorney General, in this passage, discussed the two acts of 1935, but made no mention of the 1937 act.

20. *Biennial Report of the Attorney General, For the Two Years Ending June 30, 1946*, p. 162.

the committee dwelt entirely on the one issue of tax exemption and was concerned solely with the possibility of changing the status of the lease lands with respect to local taxation.

In view of this it is felt that Mr. Parker made an unfortunate selection of material from the opinion in *Herrick v. Randolph*.²¹ He quoted that part of it in which the court specified that conditions annexed to a grant are as irrevocable as the grant itself. It is to be recalled, however, that the court went on to distinguish this situation from one in which terms or conditions should be annexed after the grant. In fact, the use of this case for his purpose was ill-advised. It was a complaint against the levying of taxes on the improvements on lease land, with a claim of perpetual exemption. The court, time after time in the opinion, spoke of *express* exemption from taxation so strongly as to lead to the inference that an implied exemption would be inadequate.²² Indeed, the court went on to say: "And the fact that this property, at the time the charter of Randolph was granted, was exempt from taxation, argues no more in favor of a perpetual exemption than. . . ." ²³ And the tax was held to be valid.

Morgan v. Cree might well have been considered, too.²⁴ Here we found the court agreeable to *local taxation* of land which by the grant in the charter was to be free and exempt from "public taxes" so long as it was devoted to the use specified in the grant. It was local taxation with which the legislative committee's letter was concerned.

Accepting *Herrick v. Randolph*²⁵ as a leading case, as did the Attorney General,²⁶ the lease lands could be regarded as subject to taxation,²⁷ in line with the ruling in *State v. Clement National Bank* in which it was said: "All contracts are made with reference to the taxing power

21. 13 Vt. 525 (1841).

22. This inference agrees with the rulings in later cases, observed in previous chapters, in which it was held that a claim of such privilege is to be interpreted most strongly against the one claiming, if there is any doubt whatever.

23. 13 Vt. 525, 531 (1841).

24. 46 Vt. 773 (1874).

25. 13 Vt. 525 (1841).

26. At this point, the writer is accepting and utilizing the ruling in this case, although he subjected it to certain serious criticisms in Chapter V. Even though those criticisms are regarded as valid, it cannot be escaped that this decision is the only one on taxation relating to the lease lands. It has never been noticed adversely by the Vermont court in later cases. And so, it is still to be treated as ruling law.

27. The *Herrick* opinion, *op. cit.*, stated that any grants made while the act of 1814 was in force would be forever exempt. No lease lands were granted after that date.

of the State, and in subordination to it.”²⁸ An additional reinforcement of this view is found in the words of the court in various opinions dealing with such tax problems as classification. The general attitude of the judges has been that the Vermont constitution contemplates that property and persons shall contribute their fair share to the cost of government.

*Piper v. Meredith*²⁹ was cited by Chief Justice Moulton in his dissent in the *Ward Case*³⁰ and should be considered here. It was in abatement of a tax on property which had been exempt from 1876 until 1925. At the earlier date Piper’s predecessor had conveyed to the town in a rather involved transaction by which he received a perpetual lease of a part of the premises. The court said:

For the purpose of taxation, it is immaterial who is the ultimate owner of the fee. Title is not the test of taxability. . . . A holder of a defeasible title having the income or use of the land, may be taxable for the land, and not merely for his title. An ordinary land tax is an ordinary expense and burden of the land, and is naturally borne by those who have the benefit of the land. . . . ‘The positions of rent-paying tenants, tenants for life and holders of defeasible titles, as tax-payers, are illustrations of the rule that title is not the test of taxability. Such persons, enjoying the product out of which the land tax may be taken, may be regarded, for the purpose of taxation, as the owners of the land, although the value of their title may be much less than the value of the land. The justice of taxing a piece of land to its tenant for life, who draws a great annual income from it, is apparent.’³¹

The opinion cited various other cases, of which one, *Wells v. Savannah*, is of particular interest, being an opinion from the United States Supreme Court³² and closely in point to the situation with which the legislative committee was concerned. There are some distinguishing circumstances which must be accounted for, but the opinion, generally, coincides with the views in *Herrick v. Randolph*³³ and *Piper v. Meredith*.³⁴ The principal difference in the circumstances is that the instru-

28. 84 Vt. 167, 190 (1911).

29. 83 N. H. 107 (1927).

30. 104 Vt. 239 (1932).

31. *Piper v. Meredith*, 83 N. H. 107, 109-110 (1927).

32. 181 U. S. 531 (1901).

33. 13 Vt. 525 (1841).

34. 83 N. H. 107 (1927).

ments of conveyance in Savannah contained an optional clause under which the grantee could purchase with a fee simple.

The important points of similarity are: 1) that the Georgia lands were public lands, the so-called "common lands" belonging to the municipality; 2) that the conveyances included an option (which was at issue in the case) which provided for a partial payment of the purchase price and a perpetual rental payment, and on this basis the tenure was inheritable and assignable, just as are the Vermont durable leaseholds; 3) that the lands had been tax exempt for more than 100 years since the conveyance in question; 4) that the specific issue raised by the plaintiffs was that of impairment of obligation of contract, as was the theme of Mr. Parker's opinion. It should be noted, too, that various municipal ordinances and other papers in Savannah referred to the arrangement as "leases," or "leased lands" and, although later on in the opinion they are spoken of as purchases, Mr. Justice Peckham in his opening statement twice refers to the lands as "leased lots."

The court was even more explicit than was the *Herrick v. Randolph* opinion³⁵ respecting implied tax exemption:

The payment of taxes on account of property otherwise liable to taxation can only be avoided by clear proof of a valid contract of exemption from such payment and the validity of such contract presupposes a good consideration therefor. If the property be in its nature taxable the contract exempting it from taxation must . . . be clearly proved. It will not be inferred from facts which do not lead irresistibly and necessarily to the existence of the contract. . . . If there be any doubt on these matters, the contract has not been proven and the exemption does not exist. This has been many times decided by this court.³⁶

The court was unimpressed by the long period of exemption: "Mere nonuser by a government of its power to levy a tax, it matters not for how long it continued, can never be construed into a forfeiture of the power."³⁷ The exempting ordinances were effective only for the period of the ordinance. The opinion then went on along the same line, as re-

35. 13 Vt. 525 (1841).

36. 181 U. S. 531, 539-540 (1931).

37. *Ibid.*, p. 541. The court did not even consider as effective the public utterances by responsible city officials, at the time of the sales, that the property would be tax exempt. In Vermont there was not even this much promise made.

cited above from the New Hampshire court, that the use and control of the marketable value of the land is a sufficient basis for taxation.

This last, and the quoted passage from *Piper v. Meredith*³⁸ are important in relation to the Vermont law, which has regularly (excepting in the 1880's) provided for laying a tax against either owner or possessor of land. It would seem inequitable for the Vermont legislature to attempt taxation against the grantees of the public lands. Such would be tantamount to forcing them to surrender the lands to the lessees, inasmuch as any worthwhile tax would be greater than the revenue from lease rents. On the other hand, the rigours of clearing the frontier land are long past and were not, in any case, suffered by any present tenants who are now enjoying the considerable advantage of lease rent rates as opposed to tax rates. A tax laid on the tenants might well make the provisions of the 1937 act sufficiently attractive to induce them to purchase under its authority.

In view of the more liberal attitude toward the system of the lease lands, taken in the *Asbestos Case* opinion,³⁹ and the favorable view held by the late Chief Justice toward *Piper v. Meredith*,⁴⁰ it would seem that legislation designed to permit the laying of local taxes against the lessees of the public lands would be a justifiable effort on the part of the legislature. Such legislation, in conjunction with the provisions of the 1937 act, could hardly be considered to violate the limitation laid down in the *Asbestos Case*,⁴¹ that the trusts be not modified, even though the *corpus* of the trust may be transformed.

One other legislative change seems advisable in the writer's view. He would recommend that the exemption from adverse possession be revoked. It would seem that 150 years should have given any of the grantees of the reservations sufficient time in which to assert their rights and gain control of the lands involved.⁴² If they have not by now succeeded in acquiring the benefit of a reservation, it would appear to be justified to allow the public the benefit through taxation of such land. The result of such a change would probably not be extensive, but any parcels to which an adverse title were perfected would thereupon be

38. 83 N. H. 107, 109-110 (1927), *supra*, p. 324.

39. 108 Vt. 79 (1936).

40. 83 N. H. 107 (1927).

41. 108 Vt. 79 (1936).

42. However, see App. E for example by recent legislation of how slowly things can move.

legitimately on the tax rolls, and any such change would help local revenue to that extent. Of course, it must be noted that some occupants of unadministered parcels of public land might prefer not to assert an adverse claim, simply committing a trespass instead, at least in any case in which the town were omitting such land from the grand list.

These appear to the writer to be the only available actions by which to attempt a change in the lease land system. The suggestion that the state administer all of the lease lands by a professional administrative establishment is not regarded as particularly useful, except to the grantees, who would thereby be relieved of the chore. It is admitted that certain improvements might result. Some parcels which are now under neither taxes nor rent could be found and made to bear their proper burden. The towns, as well as other grantees, might very well gain some income by better collection of rents. Perhaps the most important possible result could be a better supervision and control of lumbering operations on those lease land parcels lying in the timber areas, whereby the state's forest resources would be better protected. But this scheme by itself would produce no general change in the revenue status of the lease lands and would obviously add the cost of the administration to the burden of government borne by the people of the state at large.

Another suggestion put to the writer was that the legislature provide supervisory machinery and penalties by which to assure that the various trustees of the public grants administer them effectively. This idea is not impressive. From the earliest times, right up to the present, the record in Vermont of attempts by the state to require results from local officials and others has been one of failure. Reporting has not been controlled, whether it was the early effort to secure the data from the town charters for James Whitelaw's records, the effort in 1878 and 1882 to secure data on the lease lands, or the attempt in 1912 to acquire information for the Education Commission. It has been seen that the town treasurers are not complying with the law which requires reports on the glebes, nor is the University meeting the requirement for annual reports in detail on the lease lands. Innumerable other examples are at hand by which to demonstrate the ineffectiveness of this type of effort. Localism in Vermont has been too dominant a force to permit the state government much success along this line. Nor has there been much more success when penalties were attached. The early tries of this nature were little short of ludicrous, a prime instance being the difficulties experi-

enced in attempting to force the sheriffs to make proper tax returns. Since then the situation has not changed materially.

It would appear that the only possibility of any important change in the status and influence of the lease land system would be by allowing the local governments to tax the land as well as the improvements, as was accomplished in Wheelock. This, of course, is not a proposition which can be advocated with assurance of success. It would be dependent on the view taken by the court of such legislation. There seems to be good argument for a favorable decision, however. The late Chief Justice has asserted, as a fundamental doctrine: "That a law for the assessment and collection of taxes is to be construed with the utmost liberality, and that the construction is not to be a critical one with a view to defeat the enactment, but a liberal interpretation, so as to uphold it if possible."⁴³

43. *Clark v. City of Burlington*, 101 Vt. 391, 397 (1928).

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B. Judicial Decisions

(Note: Asterisks (*) indicate Lease Land cases. Arabic numerals following cases are used for classification of topics covered by each case, as follows: 1—Leases; 2—Conveyances; 3—The Common Law; 4—Judicial Construction; 5—Construction of Charters; 6—New Hampshire-New York Jurisdiction; 7—Adverse Possession; 8—Presumption; 9—Acquiescence; 10—Proprietors' Doings; 11—Public Policy; 12—Eminent Domain; 13—Police Power; 14—Ejectment; 15—Obligation of Contract; 16—Position of the Legislature; 17—Town Line Problems; 18—Local Officers; 19—Trusts; 20—Public Use; 21—Tax Exemption; 22—Ministerial Settlement.)

- Paine v. Smead, N. Chip. 51 (1791); also reported in 1 D. Chip. 56.—6.
- Jacob v. Smead, N. Chip. 95 (1791).—6.
- Executors of Hodges v. Parker, Brayt. 54 (1817).—8, 10.
- *Selectmen of Colchester v. Hill, Brayt. 65 (1815).—14.
- *Selectmen of Rockingham v. Hunt, Brayt. 66 (1817).—1, 14.
- *Rood v. Willard, Brayt. 65 (1816).—14.
- *S. C., Brayt. 67 (1817).—14.
- *Evarts v. Dunton, *et al.*, Brayt. 67 (1817).—10, 14, 22.
- *S. C., Brayt. 70 (1820).—10, 14, 22.
- *Orange County Grammar School v. Dodge, Brayt. 223 (1817).—14, 16.
- *Bush v. Whitney, 1 D. Chip. 369 (1821).—1, 2.
- *Town of Poultney v. Town of Wells, 1 Aik. 180 (1826).—2, 15, 16, 17, 22.
- *Town of Sheldon v. Goodsel, 1 Aik. 225 (1826).—22.
- *Dow v. Town of Hinesburgh, 1 Aik. 35 (1825).—22.
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- Doolittle v. Linsley, 2 Aik. 155 (1827).—7.
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 Paine v. Webster, 1 Vt. 101 (1828).—1.
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 *University of Vermont v. Reynolds Exr., 3 Vt. 542 (1831).—2, 8, 10, 11, 14, 20.
 *Boothe v. Coventry, 4 Vt. 295 (1832).—9, 10, 14.
 *Town of Charleston v. Allen, 6 Vt. 633 (1834).—5, 14, 22.
 Hull v. Fuller, 7 Vt. 100 (1835).—4.
 Burr v. Smith, 7 Vt. 241 (1835).—20.
 *Town of Maidstone v. Stevens, 7 Vt. 487 (1835).—1, 14.
 Lord v. Bigelow, 8 Vt. 445 (1836).—5, 14.
 *Williams v. Goddard, 8 Vt. 492 (1836).—2, 5, 11, 22.
 Beecher v. Parmele, 9 Vt. 352 (1837).—8, 10.
 Sawyer v. Newland, 9 Vt. 383 (1837).—7, 9, 10.
 Crowell v. Bebee, 10 Vt. 33 (1837).—9.
 Congregational Society of Poultney v. Ashley, *et al.*, 10 Vt. 241 (1838).—18, 21.
 *Strong v. Garfield, 10 Vt. 497 (1838).—1, 4, 14.
 *Gardner, *et al.* v. Rogers, *et al.*, 11 Vt. 334 (1839).—18, 22.
 *Trustees of Caledonia County Grammar School v. Burt, 11 Vt. 632 (1839).—1, 5, 14, 15, 16.
 Beach v. Haynes, 12 Vt. 15 (1840).—14, 20.
 Starksboro v. Hinesburgh, 13 Vt. 215 (1841).—15, 16.
 Corinth v. Newbury, 13 Vt. 496 (1841).—5, 16, 17.
 *Herrick v. Town of Randolph, 13 Vt. 525 (1841).—15, 16, 21, 22.
 Johnson v. Bayley, 15 Vt. 595 (1843).—6.
 *Keith v. Day, 15 Vt. 660 (1843).—1, 2, 14.
 Burton v. Lazell, *et al.*, 16 Vt. 158 (1844).—9.
 *Town of Pownal v. Myers, 16 Vt. 408 (1844).—2, 14, 19, 22.
 Smith v. Blaisdell, 17 Vt. 199 (1845).—1.
 Ackley v. Buck, 18 Vt. 395 (1846).—9.
 Edwards v. Roys, 18 Vt. 473 (1846).—4, 7, 14.
 *Congregational Society, Newport v. Walker, 18 Vt. 600 (1846).—1, 14, 22.
 Adams v. Dunklee, 19 Vt. 382 (1847).—4.
 Fuller v. Gould, 20 Vt. 643 (1848).—18.
 Marvin v. Dennison, *et al.*, 20 Vt. 663 (1846).—14.
 University of Vermont v. Joslyn, 21 Vt. 52 (1848).—1, 7.
 *Brown v. Edson and the Town of Plymouth, 23 Vt. 435 (1851).—6, 8, 14, 22.
 Gorham v. Daniels, 23 Vt. 600 (1851).—3, 4.
 Sterns v. Miller, 25 Vt. 20 (1852).—18.
 Spaulding v. Warren, 25 Vt. 316 (1853).—8, 14, 17.
 *Orleans County Grammar School v. Parker, 25 Vt. 696 (1853).—1, 14, 15, 16.

- Townsend v. Downer, 27 Vt. 119 (1854).—6.
- *Town of Montpelier v. Town of East Montpelier, 27 Vt. 704 (1854).—5, 15, 16, 17, 19, 20, 22.
- Clark v. Tabor, 28 Vt. 222 (1856).—8, 10, 14.
- Londonderry v. Andover, 28 Vt. 416 (1856).—8.
- *Society for the Propagation of the Gospel v. Sharon, 28 Vt. 603 (1856).—1, 2, 7, 14.
- *Town of Montpelier v. Town of East Montpelier, 29 Vt. 12 (1856).—5, 15, 16, 17, 19, 22.
- *Town of Colchester v. Culver, *et al.*, 29 Vt. 111 (1856).—4, 22.
- Smith v. Hastings, 29 Vt. 240 (1856).—4.
- Atkins v. Randolph, 31 Vt. 226 (1858).—16.
- Davis v. Strong, 31 Vt. 332 (1858).—18.
- Townsend v. Downer, 32 Vt. 183 (1859).—7, 8, 14.
- Congregational Society, Halifax v. Stark, 34 Vt. 243 (1861).—4.
- *Universalist Society, Fletcher v. Leach, 35 Vt. 108 (1862).—18, 22.
- LeBarron v. LeBarron, 35 Vt. 365 (1862).—3.
- *Perkins, Admr. v. Blood, 36 Vt. 273 (1863).—7, 22.
- Tracy v. Atherton, 36 Vt. 503 (1864).—7.
- *White v. Fuller, 38 Vt. 193 (1865).—1, 2, 7, 8, 16, 17, 19.
- *Victory v. Wells, 39 Vt. 488 (1866).—5, 8, 14, 16, 20, 22.
- Flagg v. Eames, 40 Vt. 16 (1867).—4.
- Cooney v. Hayes, 40 Vt. 478 (1868).—1.
- *Sterling v. Baldwin, Exr., 42 Vt. 306 (1869).—22.
- Child v. Kingsbury, 46 Vt. 47 (1873).—9.
- *Williams v. North Hero, 46 Vt. 301 (1873).—4, 5, 14, 22.
- Davis v. Judge, 46 Vt. 655 (1874).—9.
- Morgan v. Cree, 46 Vt. 773 (1874).—4, 21.
- *Currier v. Rosebrooks and Town of Brighton, 48 Vt. 34 (1875).—1, 14.
- *Lemington v. Stevens, 48 Vt. 38 (1875).—1, 18, 22.
- Grand Trunk Railway Co. v. Dyer, 49 Vt. 74 (1876).—17.
- Bennington v. Park, 50 Vt. 178 (1877).—16.
- Thompson v. Carl, 51 Vt. 408 (1878).—4.
- Gilkey v. Shepard, 51 Vt. 546 (1879).—4, 19.
- *Jamaica v. Hart, 52 Vt. 549 (1880).—1, 14, 15, 16, 18.
- Harris v. Townshend, 56 Vt. 716 (1883).—15.
- *Willard v. Benton, 57 Vt. 286 (1884).—1.
- *Spiritual Atheneum Society of West Randolph v. Selectmen of Randolph, 58 Vt. 192 (1885).—18.
- Willard v. Pike, 59 Vt. 202 (1886).—21.
- *Franklin County Grammar School v. Bailey, 62 Vt. 467 (1889).—1, 14, 15, 16.
- Vermont & Canada Railroad Co. v. Vermont Central Railroad Co., 63 Vt. 1 (1890).—1, 15.
- *Daggett v. Mendon, 64 Vt. 323 (1892).—2, 22.
- Derrick v. Luddy, 64 Vt. 462 (1892).—1.
- Aldrich v. Griffith, 66 Vt. 390 (1893).—17.
- Town of Barre v. School District, 67 Vt. 108 (1894).—19.
- Murphy v. Little, 69 Vt. 261 (1897).—1.
- In re* Willard Fuller's Estate, 71 Vt. 73 (1898).—1, 4.
- Chapman v. Longworth, 71 Vt. 228 (1898).—4.

- Colton and More v. City of Montpelier, 71 Vt. 413 (1899).—21.
 Rickard v. Dana, 74 Vt. 74 (1901).—1.
 Drouin v. The Boston & Maine Railroad Co., *et al.*, 74 Vt. 343 (1902).—7, 20.
 Davis v. Moyles, 76 Vt. 25 (1902).—6.
 Stiles, Collector of Taxes v. Newport, 76 Vt. 154 (1904).—20, 21.
 Searsburg v. Woodford, 76 Vt. 370 (1904).—17.
 Readsboro v. Woodford, 76 Vt. 376 (1904).—6, 16, 17.
 Stern v. Sawyer, 78 Vt. 5 (1905).—15.
 *Capen's Admr. v. Sheldon, 78 Vt. 39 (1905).—2, 19, 22.
In re Hickok's Estate, 78 Vt. 259 (1904).—21.
 Clement v. Graham, 78 Vt. 290 (1905).—3.
 North Troy School District v. Troy, 80 Vt. 16 (1907).—15, 19.
 United States v. United States Fidelity and Guaranty Co., 80 Vt. 84 (1907).—16, 21.
 Ripton v. Brandon, 80 Vt. 234 (1907).—18.
 Quinn v. Valiquette, 80 Vt. 434 (1907).—4.
 Felton v. Cheltis, 81 Vt. 10 (1908).—9.
 Swanton v. Highgate, 81 Vt. 152 (1908).—3, 20, 21.
 Barre v. Perry and Scribner, 82 Vt. 301 (1909).—15, 16.
 Sowles v. Minot, 82 Vt. 344 (1909).—7, 9.
 Sargent v. Clark, 83 Vt. 523 (1910).—15, 16, 17, 19.
 Deerfield River Co. v. Wilmington Power Co., 83 Vt. 548 (1910).—12, 20.
 *Trustees of Caledonia County Grammar School v. Kent, 84 Vt. 1 (1910).—1, 2, 7, 8, 11, 14, 15, 16, 19.
 *Churchill v. Capen, 84 Vt. 104 (1911).—1, 17.
 State v. Clement National Bank, 84 Vt. 167 (1911).—15, 21.
 Grand Lodge of Masons v. City of Burlington, 84 Vt. 202 (1911).—20, 21.
 *Huntley v. Houghton, 85 Vt. 200 (1911).—1, 4.
 DeGoosh v. Baldwin and Russ, 85 Vt. 312 (1912).—4.
 Johnson v. Barden, 86 Vt. 19 (1912).—3, 4.
 Rutland Railway Light and Power Co. v. Clarendon Power Co., 86 Vt. 45 (1912).—12, 16, 20, 21.
 *Trustees of Caledonia County Grammar School v. Kent, 86 Vt. 151 (1912).—1, 2, 4, 8, 14, 16, 19, 20.
 Johnson v. Jones, 86 Vt. 167 (1912).—20, 21.
 Scott v. St. Johnsbury Academy, 86 Vt. 172 (1912).—4, 20, 21.
 Barber v. Bailey, 86 Vt. 219 (1912).—7, 9.
 Wheeler v. St. Johnsbury, 87 Vt. 46 (1913).—12.
 Sanborn v. Village of Enosburg Falls, 87 Vt. 479 (1914).—7, 12.
 State v. Thomas J. Heaphy, 88 Vt. 428 (1914).—14.
 J. H. Silsby and Co. v. Kinsley, 89 Vt. 263 (1915).—4, 8, 10.
In re Heaton's Estate, 89 Vt. 550 (1915).—3, 4.
In re Robinson's Estate, 90 Vt. 328 (1916).—4.
 *Powers & Peck, admr. for Judevine v. Trustees of Caledonia County Grammar School, 93 Vt. 220 (1919).—1, 2, 19, 20.
 Bennett v. Bennett, 93 Vt. 316 (1919).—4.
 Cutler Co. v. Barber, 93 Vt. 468 (1919).—4.
 Davis v. Union Meeting House Society, 93 Vt. 520 (1920).—7, 19.
 *Holton v. Hassam and Gallagher, 94 Vt. 324 (1920).—1, 18.
 Rosenberg v. Taft, 94 Vt. 458 (1920).—1.

- Vermont Hydro-Electric Corporation v. Dunn, *et al.*, 95 Vt. 144 (1921).—12, 20.
- Town of Orange v. City of Barre, 95 Vt. 267 (1921).—18, 21.
- Clarke v. Mylkes, 95 Vt. 460 (1921).—4.
- Town of Morgan v. Town of Brighton, 95 Vt. 506 (1922).—17.
- Gore v. Blanchard, 96 Vt. 234 (1922).—20.
- St. Albans Hospital v. Town of Enosburg, 96 Vt. 389 (1923).—20, 21.
- Boyce v. Sumner, 97 Vt. 473 (1924).—18, 20, 21.
- Bragg v. Newton, 98 Vt. 102 (1924).—4.
- Village of Hardwick v. Town of Wolcott, 98 Vt. 343 (1925).—21.
- City of Burlington v. Mayor of City of Burlington, 98 Vt. 388 (1925).—4.
- Soulia v. Stratton, 99 Vt. 304 (1926).—9, 14.
- Town of Sheldon v. Sheldon Poor House Assn., 100 Vt. 122 (1927).—21.
- Town of Underhill v. Town of Jericho, 101 Vt. 41 (1928).—17.
- In re* Downer's Estate, 101 Vt. 167 (1928).—19, 20, 21.
- Middlebury College v. Central Power Corporation of Vermont, 101 Vt. 325 (1928).—12, 20.
- Vermont Kaolin Corporation v. Lyons, 101 Vt. 367 (1928).—4.
- Addison County v. Blackmer, 101 Vt. 384 (1928).—4, 7.
- Clark v. City of Burlington, 101 Vt. 391 (1928).—16, 21.
- Town of Underhill v. Town of Jericho, 102 Vt. 367 (1930).—17.
- D'Orazio v. Pashby, 102 Vt. 480 (1930).—7, 9.
- Neill v. Ward, 103 Vt. 117 (1930).—9, 10.
- *University of Vermont v. Ward, 104 Vt. 239 (1932).—1, 2, 3, 4, 11, 16, 19.
- O'Brien v. Holden, 104 Vt. 338 (1932).—15, 16, 19.
- Grand Lodge of Masons F. & A. M. v. City of Burlington, 104 Vt. 515 (1932).—20, 21.
- Town of Brandon v. Harvey, 105 Vt. 435 (1933).—4, 21.
- Brattleboro Retreat v. Town of Brattleboro, 106 Vt. 228 (1934).—15, 16, 20, 21.
- E. B. and A. C. Whiting v. City of Burlington, 106 Vt. 446 (1934).—3.
- *Jones v. Vermont Asbestos Corporation, *et al.*, 108 Vt. 79 (1936).—1, 2, 5, 15, 16, 18, 19, 20, 21.
- *Brown v. Derway, 109 Vt. 37 (1937).—1, 7, 8, 22.
- Taylor v. Blake, 109 Vt. 88 (1937).—1.
- Doubleday v. Town of Stockbridge, 109 Vt. 167 (1937).—1, 18, 21.
- Queen City Park Association v. Gale, 110 Vt. 110 (1938).—1.
- State v. Auclair, 110 Vt. 147 (1939).—13.
- Spaulding v. City of Rutland, 110 Vt. 186 (1939).—21.
- University of Vermont v. Carter, 110 Vt. 206 (1939).—8, 14.
- In re* Taft's Estate, 110 Vt. 266 (1939).—16, 21.
- Kennedy v. Rutter, 110 Vt. 332 (1939).—4.
- Dieter v. Scott, 110 Vt. 376 (1939).—1.
- Huestis v. Manley, 110 Vt. 413 (1939).—4.
- Parrow v. Proulx, 111 Vt. 274 (1940).—4, 9.
- First National Bank of Boston v. Harvey, 111 Vt. 281 (1940).—4, 21.
- In re* George S. Walker Trust Estate, 112 Vt. 148 (1941).—4.
- Snyder v. Central Vermont Railway, Inc., 112 Vt. 190 (1941).—4.
- State v. Sylvester, 112 Vt. 202 (1941).—3.
- Sowma v. Parker, 112 Vt. 241 (1941).—13.
- In re* Swanton Market Area, 112 Vt. 285 (1942).—4.

- Notte v. Rutland Railroad Co., 112 Vt. 305 (1942).—4.
 Hopkins the Florist v. Fleming, 112 Vt. 389 (1942).—4, 7.
 Nelson v. Bacon, 113 Vt. 161 (1943).—4, 7.
 Baptist Society in Wilton v. Town of Wilton, 2 N. H. 508 (1822).
 Piper v. Meredith, 83 N. H. 107 (1927).
 Samuel Pettibone *ex dem* Selectmen of Manchester v. Daniel Barber.
 (1798). (Unreported.)
 Dawson's Lessee v. Godfrey, 4 Cranch 320 (1808).
 Fletcher v. Peck, 6 Cranch 87 (1810).
 Terrett, *et al.*, v. Taylor, *et al.*, 9 Cranch 43 (1814).
 *Town of Pawlet v. Daniel Clark and others, 9 Cranch 292 (1815).
 Orr v. Hodgson, 4 Wheaton 453 (1819).
 Dartmouth College v. Woodward, 4 Wheaton 518 (1819).
 *Society for Propagation of the Gospel v. Town of New Haven and Wheeler,
 8 Wheaton 464 (1823).
 *Society for Propagation of the Gospel v. Town of Pawlet and Ozias Clarke,
 4 Peters 480 (1830).
 Wells v. Savannah, 181 U. S. 531 (1910).
 Vermont v. New Hampshire, 289 U. S. 93 (1932).

C. Constitutions, Treaties, Statutes

- Poore, Benjamin P., comp. *Charters and Constitutions*. 2 parts, pt. 1. Com-
 piled under an order of the United States Senate. 2nd ed. Washington,
 1878.
 Vermont. *Constitution*: 1777, 1786, 1793. Amendments: 1827, 1834, 1848,
 1869, 1880, 1910, 1921.
 United States. State Department. *United States Statutes at Large. Treaties
 and Conventions Concluded between the U. S. A. and Other Powers
 Since July 4, 1776*. Vol. 26. Washington, 1889.
Laws of New Hampshire, including public and private acts and resolves
 and royal commissions and instructions, with historical and descrip-
 tive notes, and an appendix. Vols. II, III. Manchester, 1904-1905.
Vermont State Papers (compiled by William Slade, Jr., Secretary of
 State). Middlebury, 1823. (Contains laws passed 1779-1786.)
Laws of Vermont, 1785. (MS copy in State Library, Montpelier.)
Laws of Vermont, 1779-1945. (All annual and biennial volumes.)
Statutes of the State of Vermont, Revised, 1787. Published by authority.
 Bennington, 1791.
Laws of the State of Vermont, Revised, 1797. Published by authority. Rut-
 land, 1798.
Laws of Vermont, 1807. 2 vols. in one. Published by authority. Randolph,
 1808.
 ———. 1816. (Unofficial compilation.) Vol. III of 1807 compilation.
 Continues to 1816. Rutland, 1817.
 ———. 1824. Compiled by William Slade, Jr., by authority of the legisla-
 ture. Windsor, 1825.
 ———. 1834. Compilation by Daniel P. Thompson. Published by au-
 thority of the legislature. Montpelier, 1835.
 Vermont. *Revised Statutes*, 1839. Burlington, 1840.
 ———. *Compiled Statutes*, 1850. Compiled by C. L. Williams. Montpelier,
 1851.
 ———. *General Statutes*, 1862. Cambridge, 1863.

- . ————. 1870. 2nd ed. Cambridge, 1870.
———. *Revised Laws*, 1880. [Rutland], 1881.
———. *Vermont Statutes*, 1894. Rutland, 1895.
———. *Public Statutes*, 1906. Published by authority. [Concord], 1907.
———. *General Laws*, 1917. Published by authority. [Burlington], 1918.
———. *Public Laws*, 1933. Published by authority. [Montpelier], 1934.

D. Unpublished Records

Addison County Grammar School. Records and papers.

Leather-bound MS of minutes, 1797-1947, in the office of Mr. Robert D. Hope, Asst. Treas. of Middlebury College, Middlebury, Vermont, titled, "Records of the Corporation of Addison County Grammar School."

Leather-bound MS of accounts, 1845-1947, in the office of Mr. Robert D. Hope, Asst. Treas. of Middlebury College, Middlebury, Vermont, titled, "Grammar School. The Corporation of Addison County Grammar School."

Butterfield, A. D. Looseleaf book of field notes of magnetic observations. In Land Office of the University of Vermont.

"John W. Chandler's Land Record and Atlas." Peacham, Vermont, June 20, 1833. 2 vols. In Vermont Historical Society Library.

State Forest Service. Looseleaf folder containing records of forest lands under lease. In office of State Forester.

McCarty, Virgil. Papers and notes for the Work Projects Administration Historical Records Survey Project on Boundary Lines.

Notes on New York Colonial County Acts relating to the Vermont area, 1683-1772.

Work notebook. Contains bibliographical data on background of town lines.

Miscellaneous papers. Contain variety of data on early town line conditions, surveying, etc.

Methodist Church Collection in the Vermont Junior College, Montpelier.

Newton, Jason. "Sequence of Events in the S. P. G. and the Episcopal Church." MS material for an Episcopal church history, probably now in hands of Mr. Newton, principal of the school at Quechee, Vermont.

Orange County Grammar School. Bound book, hand-written, titled, "Records of the Trustees," 1806-1867, containing minutes and some accounts. In the author's files.

One handwritten sheet labelled "Putney," Josiah Willard, Esq. to William Smith and Nicholas Wm. Stuyvesant, describing lands in Putney. Filed in a miscellaneous collection of deeds, by towns, in the Vermont Historical Society Library.

Rowland, R. L., "Lease Lands." Rochester, Vermont, January 24, 1931. A report in MS (typed) submitted to Middlebury College. In office of Business Manager, Middlebury College, Middlebury.

Society for the Propagation of the Gospel in Foreign Parts. Papers of the Land Agents, in possession of Mr. Joseph F. Wilson, Montpelier.

Clipped work sheets on lots in Addison and Rutland Counties, 1920-1931. Enclosed, correspondence between Guy Wilson and P. W. Adams, collector for Addison, Rutland, Essex Counties.

Clipped batch of papers titled, "Bennington County Reports 1902-1931,

1934." Includes cash reports and miscellaneous correspondence relating to lands.

Brown paper stapled folder (8½ x 14) titled, "S P G Leased Lands Chittenden County." Evidently made in 1912. Enclosed, a few letters of that year.

Clipped batch of papers titled, "Chittenden County Reports 1917-1931." Includes cash reports and miscellaneous correspondence relating to lands.

Clipped batch of papers titled, "Essex County 1920-1931." Includes cash reports and miscellaneous correspondence relating to lands.

Green folder (11 x 18). Memorandum of Rutland County leases held by S. P. G. Dated May 23, 1921.

Clipped batch of papers titled, "Washington County General." Includes cash reports and miscellaneous correspondence relating to lands.

"Windham County Lease Book: Office of Windham County Agent at Bellows Falls, Vt."

Clipped batch of papers titled, "Windham County 1920-1931 inclusive." Includes cash reports and miscellaneous correspondence relating to lands.

Black looseleaf leather folder titled, "State Card File for church Leased Land Tenants 11/25/35. Property of the Diocese of Vt."

Untitled cash book (8½ x 10). Contains accounts for the counties now collected by Mr. J. F. Wilson; payments by date starting 3/26/06, ending 7/14/40. Enclosed, form letter of notification to occupant of lease land. Also similar cash books for other collectors, kept by Mr. J. F. Wilson.

"Land Agents Cash Book—Dewey, 1903-1911 (about) Trustees of Diocese, 1930—." (8½ x 14). Contains cash records. Index shows: list of leases by counties; Land Agents account; account of W. T. Dewey, Treasurer of Land Agents.

Red leather book (9 x 6) titled, "Diocese of Vermont Treasurer's Office." Contains John F. Woodfin account, 1914-1919; Guy Wilson account, Jan. 1, 1920—May 24, 1929; Guy Wilson account as trustee, May 24, 1929-1935.

"Cash Book, J. F. Wilson, State Land Agent for the Diocese of Vermont." Contains a continuation of red leather book, 1935—.

"Record Book. Journal and Proceedings of the Agents." 1823—1927.

"Record Book, Propagation Society Abstract." Begun about 1914 by George Briggs, continued by Guy Wilson and Joseph F. Wilson (treasurers for Land Agents). Contains varied records of individual leases indexed by towns.

About one basket of bundles of miscellaneous correspondence and other records relating to lands. (Basket 12 x 20 x 8.)

Letter file box (12 x 12). Contains large mass of miscellaneous correspondence relating to lands.

Brown mottled cover folder, no title (9½ x 13). Contains correspondence 1920-1934 arranged chronologically. Also materials on five lease cases.

Brown manila envelope (9 x 15) titled, "Mr. Guy Wilson, Bethel, Vermont; Blue Print of Mt. Tabor, SPG Lots Range 9 Lot 7, Range 2 Lot 9." Also enclosed, map of Milton.

Metal box ($9\frac{1}{2} \times 10\frac{1}{2} \times 13$). Called "Hicks' Box." Contains bundles of leases.

Manila envelope addressed to Guy Wilson, Bethel Vermont ($9\frac{1}{2} \times 12\frac{1}{2}$). Contains four blank printed copies of notice of 1927 transfer of title of lands. Also blank copies of notices (1928) to town clerks for recording lands.

———. Records of the Trustees of the Episcopal Diocese of Vermont. "Diocese of Vermont, Journals of the Annual Convention, 1933-39." in the hands of Mr. F. W. Thayer, Treasurer of the Trustees of the Diocese, Burlington.

"Record Book of Trustees of Diocese of Vermont." Vol. I. Contains charter, by-laws, minutes 1881-1921. Enclosed, copy of letter to Denny, Oct. 6, 1933. In possession of Mr. J. F. Wilson, Montpelier.

"Record Book of Trustees of Diocese of Vermont." Vol. II, 1921—. In possession of Mr. F. W. Thayer, Burlington.

University of Vermont. Records and papers. Located in the safe of the Land Office of the University.

Brown leather bound volume ($8\frac{1}{4} \times 10$), handwritten. Title page inscription: "Official transcript from the Records of the Charters of Lands, granted under the Authority of the State of Vermont." Taken from the Secretary of State's Records at Montpelier, 1834.

Black leather looseleaf book ($10 \times 11\frac{1}{2}$) titled, "Old Leased Land Records by Towns."

Four black leather volumes, looseleaf, ($11\frac{3}{4} \times 10$) titled, "Lease Lands. U.V.M. & S.A.C." Vols. I-III contain photostat maps and sketches of town lot lines; "Survey of Physical Features" forms with data; miscellaneous information on the University lots, from deeds, leases, quadrennial appraisals, proprietors' records, town records, etc. Vol. IV contains only blank forms of "Survey of Physical Features." Vol. I also contains an index to Vols. I-III and a "Foreword" and "Commentary" by J. M. MacFarland, 1928.

One roll of white ruled paper bound by string (26×12) titled, "John Kellogg." Contains lists of overdue accounts, descriptions of the lands and tenants. Appears to be a work sheet covering the years 1827-1834. One white paper scroll, known as the "Rent Roll." Contains names of towns, counties, lot acreages, rent. No dates, but considered to be the first record of accounts.

Brown leather bound book ($9 \times 14\frac{1}{4}$) titled, "Rent Roll. University of Vermont." Contains accounts 1834-1867.

Cloth and leather bound volume (12×18) titled, "Rent Roll. U.V.M. and S.A.C." Contains accounts 1868-1913.

Loose pile of photostat maps of towns, showing college lots, and some drafts of disposition of lots by proprietors by divisions and lot numbers. Red leather and tan cloth bound volume ($17\frac{3}{4} \times 18\frac{1}{2}$) titled, "Maps and Plans of Vermont Towns. University of Vermont." Pasted on the pages are copies of about 73 of the original plans and surveys of towns by lots.

One brown paper wallet titled, *U. V. M. Leases*, "Lost Lands." Contains old leases with various pencilled notes referring to pages in "Rent Roll."

Three cardboard file boxes titled, "Wallets Containing Miscellaneous

Papers of the University of Vermont." Numbered as follows: 1-19-Doc. numbers 3177-3626; 20-29-Doc. numbers 2706-3176; 30-37.

Six cardboard file boxes, each titled, *University of Vermont Lands*, "Old Leases, Documents, Etc. Pertaining to the Towns of" [here follow towns in alphabetical order]. Boxes contain wallets for each town and are numbered as follows: Box 1. 1-405 Incl.; Box 2. 406-868 Incl.; Box 3. 877-1298D; Box 4. 1299-1848; Box 5. 1849-2314 Incl.; Box 6. 2316-2703 Incl.

Grey linen looseleaf folder (11½ x 9¼). No title. Contains printed forms of "Survey for Physical Features" and sociological information forms. Concerns town of Jay only.

Three bound paper work sheet books without covers, containing miscellaneous notes.

Miscellaneous papers, uncatalogued. Located in the storage room of the University Land Office.

Washington County Grammar School Records.

Bound MS book (about 6 x 6) titled, "Trustees Records of Washington County Grammar School. Montpelier, Vermont." Contains charters, lists of trustees, minutes from Nov. 18, 1813 to June 13, 1919. Located in the Montpelier Savings Bank and Trust Co.

Black looseleaf notebook, typewritten (6 x 6), titled, "Records of the Trustees of Washington County Grammar School. Montpelier, Vermont." Contains minutes of the trustees, April 26, 1920-June 19, 1940. Located in the Montpelier Savings Bank and Trust Co.

Washington County Grammar School "Ledger," 1862—. Accounts and loose receipts. In possession of Mr. Harry C. Shurtleff, Treasurer of the Trustees, Montpelier.

Correspondence file in office of Mr. Harry C. Shurtleff, Treasurer of the Trustees, Montpelier.

Record books in offices of various town clerks and town treasurers.

E. Interviews and Correspondence

Aiken, George D. Governor of Vermont. Montpelier, 1940.

Amidon, George H. State Commissioner of Taxes. Montpelier, 1945-1946.

Anderson, David V. State Auditor of Accounts. Montpelier, 1945.

Avery, John M. Former State Commissioner of Taxes and attorney in the National Life Insurance Co. Montpelier, 1940.

Bailey, Francis L. State Commissioner of Education. Montpelier, 1940.

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E. Miscellaneous

[Note: In 1940, Miss Agnes K. Lawson, curator of the Vermont Historical Society Library and Museum prepared the following catalogue of the Matt B. Jones documents, together with his marginal annotations on the documents. For purposes of easier identification of any specific document in the collection, it has appeared useful to copy Miss Lawson's list *in toto* rather than to make a new catalogue which would not necessarily follow the order in which the documents are filed. Miss Lawson's list comprises thirteen type-written pages, one copy of which is in the author's files.]

"Photostat documents the originals of which are to be found in the following depositories: *Bennington* Historical Museum, *Bennington*, Vt.; *British* Public Records Office, London, England; *Connecticut* Historical Society, *Hartford*, Conn.; *Dartmouth* College Library, *Hanover*, N. H.; *Library of Congress*, *Washington*, D. C.; *Massachusetts* Historical Society, *Boston*, Mass.; *New Hampshire* Historical Society, *Concord*, N. H.; *New York* Historical Society, *N. Y. C.*; *New York* Public Library, *N. Y. C.*; *New York* State Library, *N. Y. C.*; *Yale* University Library, *New Haven*, Conn. These documents were used

by Mr. Matt B. Jones, of Newton Centre, Mass. in writing his book, *Vermont in the Making, 1750-1777*, 1939, and presented to the *Vermont Historical Society* in January, 1940."

Bleeker, John R. *Bleeker's* survey of the *Hoosack* Patent made by *New York* in 1688 which included lands along that stream in *Pownal* and was the basis of the title of the *Dutchmen* who were sued in ejectment by John *Hosford* and other *N. H.* grantees. From *New York State Library*. See footnote on p. 106 of *Vt. in Making*.

British. Photostats of documents in the *British* Public Record Office. The references on the margins give the location of each document. Many important letters that passed between the *British* Government and provincial officials, as well as some documents, are printed in *Documentary History of New York* and in *Documents Relating to the Colonial History of New York*. It was not necessary to procure photographic copies in such cases.

1. Order of the *King* in Council July 20, 1764 fixing boundary between *New Hampshire* and *New York* with letter of special searcher that no record shows any reservation of private rights to *N. H.* grantees. 3 ph. sheets & 5 lghd. pages.
2. Correspondence between *Wentworth* and *Colden* concerning the attempt of *N. H.* Grantees to oust the *Dutch* settlers in *Pownal*. Dated Aug. 17, 1864. [sic] See *Vt. in the Making* p. 106. 9 ph. sheets.
3. Letter of *Robinson & Searl* to James *Nevin* and *Nevin's* petition to the *King* asking confirmation to *Wentworth's* grants west of *Conn. River*. Dated Dec. 20, 176(5?). Originals in *British* Public Record Office. See *Vermont in the Making*. pp. 139-140. 7 ph. sheets.
4. Gov. *Moore* to Board of Trade. Dec. 23, 1766. This letter refers to matters west of *Connecticut River* on *N. H.* Grants altho the word *River* is obviously omitted after word *Connecticut* in line 5. 7 ph. sheets.
5. Reference by Privy Council to Board of Trade of petitions of Capt. Sam'l *Robinson* and *S. P. G.* 1767. 2 ph. sheets.
6. The redrafted petition of Capt. Sam'l *Robinson* to *King* in Council prepared by Wm. Samuel *Johnson*, March 25, 1767. References at bottom of pages are to *British* Public Record Office where original is on file. 4 ph. sheets.
7. Petition of *S. P. G.* to the *King*. Prepared by Wm. Samuel *Johnson*, March 28, 1767. 2 ph. sheets & 2 lghd. pages.
8. Reference by the Privy Council to the Board of Trade of the *S. P. G.* Petn. of March 1767, with a copy of petn. attached. Dated May 19, 1767. 4 ph. sheets.
9. Report of Board of Trade re. *S. P. G.* petition of March 1767. The Board adhered to its representation of July 10, 1764 but made a suggestion that resulted in the temporary restraining order of *Julye* [sic] 24, 1767. Dated *Whitehall*, June 2, 1767. 5 ph. sheets.
10. Order of July 24, 1767 restraining land grants by *N. Y.* until the *King's* pleasure shall be known. 3 ph. sheets.
11. See *New Hants* on pp. 273-4. Relates to restraining order of July 24, 1767. 3 ph. sheets.
12. Governor Sir Henry *Moore's* report to Lord *Hillsborough* as to state of cultivation and settlement on *New Hampshire* Grants, July 5, 1768. *Vermont in the Making*. pp. 86-87. 6 ph. sheets.

13. Gov. John *Wentworth's* letter to Ld. *Hillsborough* Feb. 18, 1770 referring on p. 4 to petitions from inhabitants west of *Conn. River* and expressing his opinion re. their situation. See *Vt. in the Making*, p. 176. 7 ph. sheets.
 14. Governor *Dunmore* to Lord *Hillsborough*, Apr. 2, 1771. *British* Pub. Record Office. 4 ph. sheets. (pp. 255-258)
 15. Correspondence of *Hillsborough* & Gov. *Tryon* from *British* Public Record Office. June 5, 1771. 11 ph. sheets.
 16. *Tryon's* letter re. *Dunmore's* request to exchange *Govts.* See *Vt. in the Making*. Dated Aug. 31, 1771. 1 ph. sheet.
 17. *Ethan Allen's* letter to Gov. *Tryon*, Aug. 25, 1772. See *Vermont in the Making*. pp. 308-310. 7 ph. sheets. (pp. 739-745)
 18. Memorial of Lt. Col. John *Reid* to Gov. *Tryon* re. his lands at lower falls of *Otter Creek*. Oct. 5, 1772. 13 ph. sheets. (pp. 747-752, 755-757, 759-762)
 - 18a. (pp. 747-752) is the Memorial of Lt. Col. John Reid. . . (pp. 755-757) is an autographed document signed by Archibald Clark of New York City and dated Oct. 5, 1772 in which he certifies that "in the summer of the year 1766 he was a servant to Lieut. Col. John Reid and did then accompany him from Crown Point to view his Lands at Otter Creek." (pp. 759-762) is "The Deposition of Lieutenant Colonel John Reid respecting the Complaint made against him by the People of Bennington."
 19. Petition to the *King* drafted and filed by Paul *Wentworth* as agent for settlers on the *N. H.* Grants who were represented by James *Breakenridge* on his trip to *London* 1773. Dated Oct. 16, 1773. Also reference by *King* in Council to Bd. of *Trade*. See *Vermont in the Making* pp. 182-185 and foot notes. 11 ph. sheets.
 20. Letter re. affairs on Grants & *Ethan Allen* as prisoner in *England*. Dated Dec. 23, 1775. 2 ph. sheets.
 21. (Copy. Intelligence by Mr. Micah *Townsend*, April 10, 1781. *America. Vermont*) *British* Public Record Office C. O. 1304. 7 ph. sheets. (pp. 44-50)
 22. (Notes respecting that Part of the Country called *Vermont*. Apr. 28, 1781. *Vermont*) 12 ph. Sheets. (pp. 32-43)
 23. (Information relative to *Vermont* and her wish to become a *neutral* power in time of *war*. Mar. 18, 1794) 3 ph. sheets.
- Clinton*. Gov. George *Clinton's* proclamation ordering arrest persons claiming title under *N. H.* who should take possession of lands granted by *N. Y.* Dated July 28, 1753. In *N. Y.* Historical Socy. 1 ph. sheet.
- Connecticut*. Extracts from *Connecticut* Courant re. *New Hampshire* Grants. Where date does not appear in photostat there is a memo on the back. 34 ph. sheets.
- Continental Congress*. Documents from Papers of *Continental Congress* relating to *New Hampshire* Grants. *Library of Congress*. Div. of MSS. Papers of the *Continental Congress*.
- No. 40, vol. 1, folios 1, 21-36 (with preliminary sheet, also folios 29½ and 30a)
 - No. 40, vol. 1, folio 3 (with preliminary sheet)
 - No. 40, vol. 1, folios 38-50 (don't seem to find 50)
 - No. 40, vol. 1, folios 51-54

No. 40, vol. 1, folios 69-70

No. 40, vol. 1, folios 129-131 (don't seem to find 129)

Typewritten sets as follows:

No. 40, vol. 1, folio 1 1 page

No. 40, vol. 1, folio 167 3 pages

No. 40, vol. 1, folio 171 2 pages

No. 40, vol. 1, folio 175 3 pages

No. 40, vol. 1, folio 239 7 pages

No. 40, vol. 1, folio 311 3 pages

No. 40, vol. 1, folio 377 3 pages

Another group in same lot

Folio 113 *N. H. G.* No. 40, vol. 1. An address to Gov. *Clinton* of *N. Y.* and to *Continental Congress* by some inhabitants of *Vermont* who wish to return to the jurisdiction of *New York* (pp. 113-116)

Folio 31 *N. H. G.* No. 40, vol. 2. Letter of Lord Geo. *Germain* to Sir Henry *Clinton* re. return to *Vt.* to its allegiance, *Feb. 7, 1781.* (pp. 31-35)

Folio 65 *N. H. G.* No. 40, vol. 2. Proceedings of the Grand Committee of the *Vt.* legislature at *Charlestown Oct. 16-19, 1781.* (on 2d vol. *Gov. & Council*: p. 321 there quoted from *Slade's State Papers.* Note by C. M. *Thompson*)

Folio 195 *N. H. G.* No. 40, vol. 2. Declaration of Joseph *Dexter* re. treasonable designs of *Vermonters.*

Folio 237 *N. H. G.* No. 40, vol. 2. Report of a Committee of *Congress* to which was referred the report of a Committee of *Congress* on certain letters and papers relative to the inhabitants of *N. H. Grants.* (pp. 237-240)

Folio 277 *N. H. G.* No. 40, vol. 2. Report of the Committee of *Ct.* Valley towns on the Letter of *Mar. 31, 1782.* from Jonas *Fay* et al. and the papers on file pertaining to the same subject and received since *Aug. 20, 1781.* (pp. 277-282)

Folio 377 *N. H. G.* No. 40, vol. 2. Deposition of William *Lee* of *Chesterfield*, *Cheshire Co., N. H.,* dated *Jan. 24, 1783.* (pp. 377-378)

Folio 381 *N. H. G.* No. 40, vol. 2. Affidavits of Jonathan *Kittredge* of *Westminister* and Dr. Thomas *Frink* of (*Keene*) re. treasonable designs of *Vermonters.* (pp. 381-384)

Folio 395 *N. H. G.* No. 40, vol. 2. (Deposition of Capt. Artemas *How*, Lieut. Isreal *Smith* and Lieut. Jonathan *Church*, all of *Brattleborough, Cumberland Co., N. Y.,* dated *Jan. 11, 1783.*) (pp. 395-396)

Folio 429 *N. H. G.* No. 40, vol. 2. Request of 16 citizens of *Vt.* for the release of Major (Wm) *Shattuck* and Esq. (Charles) *Phelps* from imprisonment.

Folio 437 *N. H. G.* No. 40, vol. 2. Court order for banishment from *Vt.* of Timothy *Church*, Timothy *Phelps*, Henry *Evans*, & Wm. *Shattuck*, *Sept. 14, 1782.*

Folio 449 *N. H. G.* No. 40, vol. 2. Letter of Timothy *Church* to Gov. Geo. *Clinton* concerning conduct of *Vermonters.* (pp. 449-450)

Dunmore. Petition of Settlers to Gov. *Dunmore.* *Vt. in the making.* p. 178. 5 ph. sheets.

Fort Dummer. Plan of *Fort Dummer*, 1749. Original in *N. H. Historical Socy. Library.* See *Vt. in the Making.* p. 9. 4 ph. sheets.

Johnson. Letters & Diary of William Samuel *Johnson* relating to *N. H.* Grants in *Connecticut* Historical Socy. *M. B. J.*'s transcript attached to each letter. 1 letter *W. S. J.* to *Agur Tomlinson* from *New York* Public Library.

1. Extracts from Wm. Samuel *Johnson* diary in *Conn.* Hist. Socy. relating to *N. H.* Grants matter upon which he was employed to assist Capt. Samuel *Robinson*. 8 lghd. pages (MBJ)
2. Memo from Wm. Samuel *Johnson*'s letters to Gov. Wm. *Pitkin* of *Conn.* in *Mass.* Hist. Socy. Series v, fol. 9, 1 lghd. page. (MBJ)
3. Indorsed to the *New Hampshire* Commr & Col. *Ruggles* *London*, Mar. 28 & 31, 1767, *New Hampr.* Lands, (4 ph. sheets & 5 lghd pages)
4. Wm. Samuel *Johnson* to *Agur Tomlinson*, *London*, Mar. 31st, 1767. *Conn.* Hist. Socy. Vol. 1, Bound *W. S. J.* letters. 2 ph. sheets & 1 lghd. page)
5. Wm. Samuel *Johnson* to *Agur Tomlinson*. Ct. Hist. Socy Bound Vol. 1, *W. S. J.* letters, *London*, Sept. 2d. 1767, 8 lghd. pages & 5 ph. sheets.
6. Letter of Wm. Samuel *Johnson* to Col. *Eliphalet Dyer*. *W. S. J.* Bound Vol. 1 No. 19. Ct. Hist. Socy. *London*, Sept. 12, 1767. 3 sheets & 2 lghd. pages.
7. Wm. Samuel *Johnson* to *Agur Tomlinson* & Mr. *Burling*, March 18, 1768. Ct. Hist. Socy. *W. S. J.* papers. Box of loose Mss. 3 sheets & 3 lghd. pages.
8. Wm. Samuel *Johnson* to John *Wendell*, March 31, 1768. *London*, Mar. 31, 1768. *Conn.* Hist. Socy. *Johnson* Mss. Bound Vol. 1. No. 33. 4 ph. sheets & 4 lghd. pages.
9. Wm. Samuel *Johnson* to *Agur Tomlinson*, *London* May 6th, 1769. *Conn.* Hist. Socy. *W. S. Johnson* Letters. Box 1 loose. 2 ph. sheets & 5 lghd. pages.
10. ————. ————. Same. Photostat from *New York* Public Library. A copy. Original in *Conn.* Hist. Soc. Precedes this. 7 ph. sheets.
11. Wm. Samuel *Johnson* to *Agur Tomlinson*. *London*, June 4, 1771. *Conn.* Hist. Socy. *W. S. Johnson* Letters. Box 1 loose. 2 ph. sheets & 2 lghd. pages.

Kempe. Photostats of the Report and Appendices made by Atty. Gen. John Tabor *Kempe* of *New York* to Governor *Dunmore* in March 1771 as requested by the latter. His action was occasioned by the petitions, one to the *King* and one to Gov. *D.*, signed by inhabitants on the *New Hampshire* Grants east of the *Green Mountains* in the autumn of 1770. See *Vermont in the Making* pp. 177-178.

This Report is found in *British* Public Record Office C.O. 5/1102 pp. 121-141 and is followed by numerous appendices referred to in the text of the report. Photostats of such appendices as were not readily found in print were obtained as well as some of those that were in print. It may be noted that the Report and some appendices were photostated in reduced size while others are full size.

At the top of p. 130 of the Ms. Report *Kempe* states that many settlers on the *N. H.* Grants purchased their land on condition that they pay no money unless their *New Hampshire* titles were validated. This, if true, has an important bearing upon the good faith of settlers on the *N. H.* Grants, but was not referred to in *Vt. in the Making* as no confirmation was found.

The petitions to the *King* and to Gov. *Dunmore* are filed herewith in photostat, on several separate sheets, although they are printed in *Doc. Hist. of N. Y.* Vol. IV. See also *Dunmore to Hillsborough Mar. 9, 1771*. Ibid. pp. 414-415. 19 pages.

Kempe's Report.

Appendices, 3, 4, 5. pages 1, 3, 4

Appendix, 19 & 20. pages 5-7

Appendix, 24. 4 ph. sheets.

Appendix, 25. 3 ph. sheets.

Appendix, 27. In print. 4 ph. sheets.

Appendices 28, 29, 30. These are in print. 12 ph. sheets.

Appendix, 31. In print. 3 ph. sheets.

Appendix, 32. In print. 2 ph. sheets.

Appendix, 34. In print. 3 ph. sheets.

Appendix, 36. 4 pages.

Appendices 38, 39, 40, 41. 4 ph. sheets, 2 pages, 2 ph. sheets.

Appendix, 42. 4 pages.

*1

Lansing. Two letters John *Lansing* Jr. to Maj. Gen. *Schuyler* July 26, 1780 concerning activities of *Ethan Allen* in negotiations with British. From *New York* Public Library. 6 ph. sheets.

Lebanon. Names of the Grantees of *Lebanon* as Enter'd on Charter. Dated Nov. 27, 1764, Province of *New Hampshire*. B.P.R.O. C.O. 5/928 D. 30.

Map. No. 1. Notes. This Map exhibits the *French & English* Grants. In Public Record Office C.O. Class 5-1232. This Mss map is filed with State of the Right of Colony of *N. Y.* 1773.

Map. No. 2. shows *Vermont* as belonging to the Iroquoisa. In the *British* Public Record Office C.O. Class 5-1232. This Mss map is filed with State of the Right of the Colony of *N. Y.* 1773. M.P.G. 597/2.

Map. Photostat of a map or plan in *British* Public Record Office which shows a plan for the expansion of *Vermont* west of *Connecticut* River toward or to Lake *Erie*. The notation upon it seems to indicate that it shows a part of the plan involved in the *Haldimand* Negotiations. Reference at side M.P.G. 252 C.O. 5.8.77.

Map. A photostat of the original map sent by Gov. *Moore* in 1766 is also included among these photostats. The outlines in red show the *New York* Grants all of which except *Princetown* & some in *Bennington* & *Shaftsbury* were military. That only 64 of *Wentworth's* 128 township grants are outlines shows how little was known as to his land grant activities even at that date. A check up of *N. Y.* Patents indicates that not all of *Bennington* & *Pownal* were granted by *N. Y.* although far the larger part certainly was.

Moore. Letter to Lord Commrs. of Trade & Plantations written by H. *Moore* dated *New York*, Mar. 20, 1766. 3 pages.

Moore. Letter to Sir Henry *Moore*, Gov. of *New York*, written from *Whitehall*, Nov. 8, 1765 by the Lords of the Committee of His Majesty's most honorable Privy Council for Plantation Affairs. 2 pages.

*2

New Hampshire Grants. Photostats of Documents in *New York* Historical Socy. re. *New Hampshire* Grants including James *Duane* Papers, *Rutherford's* Journal & other *Princetown* Papers, *Fays* Journal (from

Bennington Museum), Yates on Attempted Eviction of *Breakenridge*, &c &c.

1. *Princeton, N. Y. Hist. Socy. James Duane Papers. May 4, 1764. Letter Isaac Vrooman to James Duane. Has just returned from a survey of lands on Battenkill. . .*
Jan. 12, 1765. Letter Isaac Vrooman to James Duane from Schenectady.
Feb. 13, 1765. Isaac Vrooman to James Duane from Schenectady.
Mar. 30, 1765. Isaac Vrooman to James Duane from Schenectady.
April 1765. Bill of Isaac Vrooman, surveyor to John Tabor Camp (Kempe) Walter Rutherford, James Duane, John Duncan & Isaac Vrooman. . . 11 ph. sheets altogether.
2. *Vrooman to James Duane. Duane Papers in New York Historical Socy. Dated Mar. 30, 1765. 2 ph. sheets.*
3. *James Duane's Journal in his papers in New York Hist. Socy. Dated June 20?, 1765. 14 ph. sheets & 1 typewritten page. (pp. 648-661)*
4. *Major Walter Rutherford's Journal in James Duane papers. N. Y. Hist. Socy. Dated June 29, 1765—. 12 ph. sheets. (pp. 628, 630-640)*
5. *Dummerston. October 28, 1766. Declaration by 38 subscribers (but contract calls for 66. (prob. lost) petitioners or associates in a petition for grant of vacant lands known as Fulham, that they their grant in trust for William Kelly of N. Y. merchant and James Duane. They agree after patent to convey to Kelly & Duane or their nominees. 3 ph. sheets. (pp. 171-173)*
6. *Fulham (Dummerston) Galway. N. Y. H. S. James Duane papers.*
 - a. *Nov. 10, 1766. John Kathan agreement with James Duane. . .*
 - b. *Galway Sept. 28, 1768. John Kathan to James Duane. . .*
 - c. *Agreement (bond) L300. John Kathan, Alexander Kathan, Daniel Kathan, John Kathan, Jr. & Charles Kathan with James Duane. . . signed by the 5*
 - d. *Dec. 10, 1771. Agreement of the Kathans as above. They are owners & proprietors & settlers of a part of Fulham under a patent of B.W. late Gov. of N. H. Dec. 26, 1753. . . 12 ph. sheets.*
7. *Duane Papers*
 - a. *(indenture between Jeremiah French of Bookman's precinct in Dutchess County and James Duane, N. Y. C. relative to vacant tract of land in Danby.) Dated Nov. 21, 1766. 3 ph. sheets (pp. 175-177)*
 - b. *(Map of Danby with historical data.) 3 ph. sheets.*
 - c. *(Document signed by a list of subscribers headed by John Pearce relative to a tract of land in Danby.) Dated Nov. 25, 1766.*
 - d. *(Document by Subscribers Inhabitants of Danby to William Tryon, Gov. of New York, relative to their appointing an attorney to act in their behalf concerning some tracts of land in said town). Dated Apr. 7, 1772. 3 ph. sheets. (pp. 450-452)*
8. *John Munroe. N. Y. H. S. Duane papers. Forwls Dec. 5, 1770. J. M. to James Duane. . . 3 ph. sheets. (pp. 424-426)*
9. *Nathan Stone of Windsor proposes a method of settlement of the land troubles on N. H. Grants in attached letter (photostat) of Dec. 29, 1770 to William Smith and James Duane. From James Duane Papers in N. Y. Hist. Socy. See Vermont in the Making p. 262. This letter is not in Stone's handwriting. See his signature. 4 ph. sheets. (pp. 5-8)*

10. *Durham*. In James *Duane* Papers. N. Y. Hist. Socy. Deposition of Benjamin *Colvin* of *Shaftsbury* . . . dated *April 12, 1771*. 1 ph. sheet. (p. 19)
 11. Robert *Yates* account of the attempted ejectment of James *Breakenridge* in James *Duane* papers. *New York* Hist. Socy. Dated *July 20, 1771*. 6 ph. sheets. (pp. 428-433)
 12. *Colden's* Attitude as to N. H. Grants. *Duane* Papers. N. Y. H. S. *Nov. 22, 1771*. Walter *Patterson* to James *Duane*. Concerns land in Ct. Valley he desired to obtain. . . . 4 ph. sheets.
 13. Agreements (2) & power of atty between settlers in *Danby* and *New York* agents concerning confirmation by *New York* of the N. H. grant. 1772. *Danby* was called *Chesterfield*. *Duane* Papers in N. Y. Hist. Socy. See *Vt. in the Making* pp. 112-113. 7 ph. sheets.
 14. *Tinmouth*. N. Y. H. S. *Duane* Papers. *Feb. 14, 1772*. Power of attorney to John M. *Kneel* (*Neal?*) of *Tinmouth* . . . 2 sheets. (pp. 23-24)
 15. *Charlotte* Co. Population. An undated list of the number of heads of families perhaps in the proposed *Charlotte* Co. & of date about when it was erected. Covers *Vt.* twps. 2 ph. sheets. (pp. 422-423)
 16. *Socialborough*. Undated Letter. Benjamin *Spencer* to James *Duane* in N. Y. H. S. *Duane* Papers . . . 2 ph. sheets. (pp. 29-30)
 17. *Durham* & *Socialboro*. *Duane* Papers. N. Y. H. S. Petition & Compl't of Benjamin *Hough* for Inhabitants of *Durham* & *Socialborough* . . . A draft probably by *Duane* but unsigned. 4 pages (pp. 145-148)
 18. *Socialborough*. Situation re. titles in 1772. N. Y. H. S. *Duane* Papers. *Durham* *Apr. 11, 1772*. Benj. *Spencer* to James *Duane* . . . 2 ph. sheets. (pp. 458-459)
 19. Journal of Jonas and Stephen *Fay* on their trip to *New York* June-July 1772. Begins *June 19, 1772*—Original in *Bennington* Historical Museum. 6 ph. sheets.
 20. John *Munro* to James *Duane* *July 15, 1772* from James *Duane* Papers in *New York* Historical Socy. 2. ph. sheets. (pp. 482-483)
 21. *New Hampshire* Papers (Misc.). N. Y. H. S. (Petition of James *Breakenridge* to John *Wentworth*, Gov. of N. H., speaking as agent for 1500 families and saying how they wish to be restored to the jurisdiction of N. H. Province. Dated *Portsmouth Dec. 13, 1773*. Also added to the same is a favorable granting of the petition by J. W. but with stipulations. Dated *Feb. 12, 1774*.) 3 ph. sheets.
- New Hampshire*. Petition of the N. *Hampshire* Inhabitants to His Majesty. In the East of *Dunmore's* (No. 7) of *Mar. 9, 1771*. 1 large ph. sheet.
- New York*. Photostats from New York Land Patents in Secy of States Office (Land Office) at *Albany*. Also Various land petitions &c. from Land Papers in N. Y. State Library, *Albany*.
1. Photostat of a copy of John Henry *Livius'* alleged grant from Gov. *Shirley* of *Mass.* Bay. Believed to be spurious. It could not be found in *Massachusetts* Archives. This copy was filed by *Livius* with N. Y. Council Sec. Memonon [sic] back ? Dated *Aug. 31, 1744*. 4 ph. sheets.
 2. Petition of Hendrick *Schneyder* et al. for land in *Bennington* (in part.), descriptive portion of grant Map and list of shares. Dated ca. *Mar. 24, 1762*. 6 ph. sheets.

3. Petition of Michael *Schlatter* with certificate (*May 30, 1865*) [sic] and the Military Grant to him of 2000 acres in *Bennington*. 4 ph. sheets. Dated *July 14, 1764*.
 4. Mandamus from *King* in Council and *New York* grant (military) thereunder to Capt. *John Small* reserving land for settlers under *N. H. Grants*. Dated *Sept. 6, 1765*. M. B. J. 4 ph. sheets.
 5. John Small's Military Patent in *Shaftsbury* in *New York* Military Land Patents. Dated *Oct. 22, 1765*. 1 ph. sheet.
 6. *New York* Land Patents in Secy of State's Office. James *Napier*. Dated *Oct. 26, 1765*. Vol. 14, page 159. 3 ph. sheets.
 7. *New York* Military Patents. George *Munroe*. Vol. 1, p. 191. Dated *Oct. 28, 1765*. 1 ph. sheet.
 8. *New York* Land Patents. James *Napier* dated *October 30, 1765*. Vol. 14, page 159. 3 ph. sheets.
 9. Petition of Joseph Bryant, one of the heirs of John *White*, deceased, praying that his name be inserted as one of the grantees in the charter for the township of *Putney*. Dated *August 11, 1766*. *N. Y. Colonial Manuscripts indorsed Land Papers*, v. 21, p. 107 2 ph. sheets. (Refers to Equivalent Lands. See *Vt. in the Making* Ch. I. MBJ)
 10. *New York* Land Patents. William *Cockburn* in part plotting formal parts. Vol. 15, p. 184. Dated *May 21, 1770*. 2 ph. sheets.
 11. Photostat from *New York* State Library. Warrant dated *Aug. 14, 1770*. 1 ph. sheet.
 12. *Dec. 5, 1770*. Schedule containing the names of the petitioners, and the number of their families, which accompanies: Petition of Benjamin *Spencer* and his associates, inhabitants of the township of *Durham*, praying a grant and confirmation of said township. *Land Papers* 27: 132. 1 ph. sheet.
 13. *Feb. 29, 1772*. Petition of James *Rogers* and associates, praying that all further proceedings on the petition of Jacob *Walton* and others, may be stayed, and that the lands therein mentioned, if found vacant, and not to lye within the township of *Kent*, may be granted to the petitioner and his associates. *New York* Colonial Mss. indorsed *Land Papers*, v. 31, p. 14. 4 ph. sheets.
 14. Form of land grant by *N. Y.* issued under Mandamus order from the *King* in Council. Dated *Apr. 6, 1774*. 5 ph. sheets.
 15. (Papers relative to *Vermont*. Petition of Elnathan *Foster* and others. 1777) 2 ph. sheets. From Calender of Historical Manuscripts relating to the War of the Revolution, Vol. 2, *Albany*, 1868.
- Robinson*. Saml *Robinson's* Indictment from *Suffolk Co. (Boston)* Early Court Files. This from files of Hampshire County. Case 157488.
- Letter of Gov. *Moore* to Socy. for Propagating Gospel in Foreign Parts, *New York* Hist. Socy. *New York* Episcopal Convention Vol. II, pp. 401-412.
- Also Counterfeiting case vs. Dr. Seth *Hudson*. 6 ph. sheets for the three groups, and 4 lghd. pages.
- Smith* Diary of William *Smith* and other Mss. from *New York* Public Library. These photostats are extracts from those parts of *Smith's* diary that dealt with *New Hampshire* Grants affairs. The entire diary which is in *N. Y.* Public Library fills 5 or 6 folio volumes as I recall it. *M.B.J.* (pp. 1-63, with 2 preliminary leaves and also page 49a) It has diary entries from *Mar. 31, 1772* to *Dec. 17, 1773*.

Two preliminary unnumbered pages beginning with entry for *Dec.* 29, (1773). Then follow pages numbered in pencil 1 to 96 inc. covering *Diary Jan. 15, 1774 to Aug. 13, 1775.*

Sheets from William *Smith's* *Diary* in *New York* Public Library. Year 1780? as there are references to *Ethan Allen's* presence in *N. Y.* presumed by *Smith* to be in *British* negotiations. (Between penciled pages 5-6 there is an extra unnumbered sheet).

Vermont. Vermont Leaders & British. Draft of statement (unsigned) by inhabitants of *Brattleboro, Guilford & Halifax* to state of *N. Y. & Congress.* About 1781. 7 ph. sheets. (pp. 185-191)

Wendell. Notes by *M. B. J.* on correspondence of *John Wendell* and *Wm. Samuel Johnson* in *Connecticut* Historical Socy. Attached are photostats of letters of *Abraham Lott* of *New York* City to *Wendell* found among *New Hampshire* Land Papers in *New York* Public Library. 12 ph. sheets and 10 lghd. pages by *MBJ.*

Wentworth. Copies. Gov. *John Wentworth* Letters re. *New Hampshire* Grants in *Dartmouth* College Library. 15 ph. sheets & 5 typewritten ones.

Wentworth. Correspondence of *Benning Wentworth* with British officials concerning his grants West of *Connecticut* River. Photostats from *British* Public Record Office. 45 ph. sheets.

July 10, 1764. Representation of Bd. of Trade which became basis of Order in Council of *July 20, 1764* defining *Conn.* River as boundary between *N. H. & N. Y.*

Woodstock. Advertisement relating to the confirmation of the *New York* patent of *Woodstock* which appeared in *The New York Gazette*; and *The Weekly Mercury*, *June 22, June 29, July 6, and July 13, 1772.*

Wyoming. No. 29 in Vol. 57, *Timothy Pickering* Papers in *Mass. Hist. Socy.* marked *Wyoming 1755-1787.* An address from the inhabitants of *Wyoming* and others, contiguously situated on the Waters of the River *Susquehannah*; to the people at large of the commonwealth of *Pennsylvania.* Dated *Wyoming, Sept. 12, 1786.* Printed in *Hudson,* by *Ashbel Stoddard.* 1 ph. sheet.

Young. Dr. *Thomas Young* to *Ezra Stiles.* Dated *Amenia Dec. 5th, 1762.* 5 ph. sheets. (in *Yale* University Library.)

*1 *King.* Petition to *King.* November 1770. Somewhat reduced in size by photograph. 3 ph. sheets.

*2 *New Hampshire Gazette.* Various Extracts relating to various aspects of *N. H.* Grants affairs. When dates of Newspapers do not appear in photostat see back of same. 14 ph. sheets.
Also *Ethan Allen's* letter to *Wm. Samuel Johnson.*
Letter of *Ethan Allen* to *William Samuel Johnson* in re. his agreement to aid *Susquehannah* Company settler in *Wyoming* in *Conn. Hist. Socy.* 2 ph. sheets.

Petition of *Charles Phelps* et al. that *Mass.* Bay take over townships on western bank of *Ct.* river above *Northfield &c.* 4 ph. sheets.

Advt. in re. *N. Y.* confirmation of *Cavendish* charter. 1 ph. sheet.

Colden's earliest proclamation re. lands in *Vt.* claimed by *John Henry Lydius.* 1 ph. sheet.

APPENDIX A

TOWN CHARTERS IN WHICH THE RESERVATIONS OF THE PUBLIC RIGHTS DO NOT CONFORM TO THE NORMAL PATTERN

A. Wentworth Charters¹

Bennington	No S. P. G. or glebe shares reserved
Brattleborough	No land reserved for school benefit
Dummerston	No land reserved for school benefit
Fairlee	No land reserved for first settled minister
Guilford	No land reserved for school benefit
Halifax	No public shares reserved
Pownal	No S. P. G. share reserved
Putney	No land reserved for school benefit
Rockingham	No land reserved for school benefit
Townshend	No land reserved for school benefit
Westminster	No land reserved for school benefit
Woodford	Specified that one whole share for the S. P. G. should "be laid out in one lot of good land"
Dover	These were small grants of 2000-3000 acres each and contained no public reservation, but have by now become towns of near normal size
Readsboro	
Wardsboro	

B. Vermont Charters²

Athens	Only two shares reserved: one for school and one for first settled minister
Bakersfield	Only two shares reserved: one for school and one for first settled minister
Canaan	Only three shares reserved: one each for school, first settled minister, and college
Derby	No college share reserved
Deweysburch	Only three shares reserved: one each for school, first settled minister, and college
Elmore	Provides for five reservations, but lists only four, omitting mention of the first settled minister
Fayston	An extra share for use of the ministry and none for a grammar school
Huntsburgh	Provides for five reservations, but lists only four, omitting mention of the grammar school
Isle la Motte	Only three shares reserved: one each for school, first settled minister, and support of Gospel

1. *N. H. S. P.*, vol. XXVI, vol. III.

2. *Vermont State Papers*, vol. II.

Landgrove	No reservations
Medway	Four shares reserved; none for social worship of God
Searsburgh	Only two shares reserved: one each for school and social worship of God
Two Heroes	Three shares reserved on each island; no reservation for college or grammar school
Wheelock	Two shares reserved: one each for school and support of the ministry
Whitingham Gore	Three shares reserved: one each for school, college, and first settled minister
Grant to Whitelaw, Savage and Coit	Two shares reserved: one each for school and social worship of God

There were also the following gores and grants in which no public shares were reserved:

Aiken's Gore
 Anderson's Gore
 Avery's Gores (3 of them)
 Benton's Gore
 Blake's Gore
 Enosburgh Gore
 Hamilton's Gore
 Harris' Gore
 Hitchcock's Gore
 Hopkinsville
 Jackson's Gore
 Johnson's Gore
 Kelly's Grants (3 of them)
 Knight's Gore and Islands
 Marvin's Gore
 Norfolk
 Parker's Gore
 Pearsall's Gore
 Spooner's Gore
 Walden Gore
 Seth Warner Lands
 J. and A. Hunt Land

These were to a relatively few proprietors in each case and for the most part included an acreage much less than that of a town grant. Except for a few of them, they were absorbed in adjacent towns. In fact, a good proportion of their granting charters carried provision for this action.

APPENDIX B

LEGISLATION PERTAINING TO LEASE LANDS¹

Section 1. Conveyancing

- 1808 (comp.), II, ch. X, p. 196.
- 1824 (comp.), ch. 18, no. 2.
- 1827-1831, 1831, pp. 32-33.
- 1835-1837, 1836, p. 108.
- R. S., ch. 60, sec. 26.
- C. S., ch. 63, sec. 29.
- 1849-1851, 1851, p. 140.
- 1852-1854, 1852, pp. 85-103.
- 1855-1856, 1856, pp. 49-51.
- G. S., (1862), ch. 65, sec. 26.
- 1864, pp. 107-124.
- 1872, pp. 543-581.
- 1878, p. 61.
- R. L., ch. 97, sec. 1953.
- 1884, p. 122.
- 1886, pp. 59-60, 214.
- 1910, pp. 64-66.
- 1925, p. 52.
- 1931, pp. 199-200.
- 1935, pp. 78-79, 265-266.
- 1937, pp. 89, 110.

1. Includes statutes and resolutions, compilations and revisions. Compilations and revisions are indicated by the following abbreviations:

- Statutes of the State of Vermont, Revised* (1787) : 1787R
- Laws of the State of Vermont, Revised* (1797) : 1797R
- Laws of Vermont* (1807, 1816) : 1808 (comp.), 1817 (comp.)
- Laws of Vermont* (1824) : 1824 (comp.)
- Laws of Vermont* (1834) : 1835 (comp.)
- Revised Statutes* (1839) : R. S.
- Compiled Statutes* (1850) : C. S.
- General Statutes* (1862, 1870) : G. S. (1862), G. S. (1870)
- Revised Laws* (1880) : R. L.
- Vermont Statutes* (1894) : V. S.
- Public Statutes* (1906) : P. S.
- General Laws* (1917) : G. L.
- Public Laws* (1933) : P. L.

Volumes containing several years of session laws are indicated by the years bound together, followed by the particular year concerned. Because of varying practices of the legislature in designating the different laws from year to year, only the page numbers are here given, for the sake of uniformity. Exceptions to this rule are the compilations and revisions after 1800, in which chapters and section numbers are used.

Section 2. Common Law

- Jr. of the Gen. Assem., 1778, March, Slade, *State Papers*, p. 264.
 1779, February, Slade, *State Papers*, pp. 287-288.
 1782, June, Slade, *State Papers*, p. 450.

Section 3. New Hampshire-New York Jurisdiction

- 1779, February, Slade, *State Papers*, p. 388.
 1779, October, Slade, *State Papers*, pp. 392-393.
 1780, March, Slade, *State Papers*, pp. 395, 397-398.
 1780, October, Slade, *State Papers*, p. 405.
 1781, February, Slade, *State Papers*, p. 424.
 1781, October, Slade, *State Papers*, pp. 443-444.
 1783, October, Slade, *State Papers*, pp. 475-476.
 1784, February, Slade, *State Papers*, p. 488.
 1784, October, Slade, *State Papers*, p. 494.
 Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1784, pp. 36-37, 56
 Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, p. 4.
 1785, October, Slade, *State Papers*, pp. 500-503.
 1786, October, Slade, *State Papers*, p. 505.
 1787, October, pp. 12-13.
 1787R, pp. 259-261.
 1793, pp. 7-10.
 1802-1804, 1802, pp. 27-28, 31-32.
 1805-1807, 1805, pp. 106-107.
 1805-1807, 1806, pp. 169-172.
 1808-1810, 1809, pp. 62-63.
 1811-1814, 1812, pp. 153-154.
 1819-1821, 1821, p. 121.
 1852-1854, 1852, p. 54.
 1900, p. 386.
 1902, pp. 178-179.
 1945, p. 263.

Section 4. Statutes of Limitations

- 1783, October, Slade, *State Papers*, pp. 475-476.
 1784, October, Slade, *State Papers*, p. 494.
 1785, October, Slade, *State Papers*, pp. 500-503.
 1787R, 1787, March, p. 101.
 1787, October, pp. 12-13.
 1787R, 1790, October, pp. 212, 261.
 1797R, 1797, November, pp. 599, 602, 614-615.
 1801, p. 13.
 1802-1804, 1802, pp. 164-165.
 1811-1814, 1811, pp. 48-50.
 1819, p. 26.
 1828-1834, 1832, p. 4.
 R. S., ch. 58, sec. 4.
 C. S., ch. 61, sec. 4.
 1852-1854, 1854, pp. 17-18.
 G. S. (1862), ch. 63, sec. 4.
 R. L., sec. 954.

V. S., sec. 1223.

P. S., sec. 1575.

G. L., sec. 1875.

P. L., sec. 1674.

Section 5. Betterments

1780, March, Slade, *State Papers*, p. 395.

1781, October, Slade, *State Papers*, pp. 442-443.

1785, October, Slade, *State Papers*, p. 503.

1800, pp. 5-11.

1819-1821, 1820, pp. 14-19.

1827-1831, 1827, pp. 6-7.

1827-1831, 1828, p. 5.

1828-1834, 1834, pp. 6-7.

1845-1848, 1848, p. 29.

1855-1856, 1856, p. 18.

Section 6. Easements

1797R, App., pp. 71-79.

1805-1807, 1805, pp. 152-153.

1819-1821, 1821, p. 82.

1827-1831, 1830, pp. 8-20.

1835-1837, 1835, pp. 18-20, 65.

1849-1851, 1849, pp. 30-46.

1855-1856, 1856, p. 31.

1859-1860, 1859, pp. 146-148.

G. S. (1862), ch. 28, secs. 21-23.

1872, pp. 599-601.

1874, p. 166.

1896, p. 132.

1937, p. 19.

Section 7. Proprietors' Doings²

Jr. of the Gen. Assem., 1787, February, p. 44. (Hungerford, Smithfield, Fairfield).

1797R, 1787, February, App., pp. 15-19.

1791, October, p. 13.

1792, pp. 34-36. (Rutland).

1794, pp. 6-7. (Wilmington, Draper).

1794, pp. 82-83.

1794-1796, 1794, pp. 85-91.

1794, pp. 134-135. (Medway).

1794-1796, 1796, p. 93. (Underhill).

1794-1796, 1796, pp. 96-98. (New Haven).

1796, App., pp. 37-38.

1796-1798, 1797, November, pp. 22-24. (Westford).

1796-1798, 1797, November, pp. 45-46. (Bethel).

2. When acts concern particular situations in particular towns, the names of the towns involved are placed in parentheses following the act.

- 1796-1798, 1797, November, pp. 47-49. (Barnard).
1797, October, pp. 42-45. (Brumley or Landgrove).
1798, pp. 45-46. (Newhaven).
1798, p. 47. (Derby, Salem).
1798, pp. 51-52. (Cornwall).
1798, pp. 52-53. (Middlebury).
1796-1798, 1798, p. 54. (Williamstown).
1796-1798, 1798, pp. 54-56. (Brookfield).
1796-1798, 1798, pp. 56-57. (Goshen and Warren).
1796-1798, 1798, pp. 57-59. (Jericho).
1798, pp. 60-61. (Salisbury).
1796-1798, 1798, pp. 97-103. (Goshen).
1796-1798, 1798, pp. 115-116. (Winhall).
1796-1798, 1798, pp. 123-124. (Concord).
1799, pp. 74-76. (Williston).
1799, pp. 76-77. (Jericho).
1799, pp. 79-81. (Athens).
1799, pp. 94-97. (Georgia).
1799, p. 125. (Lutterloch).
1800, pp. 86-87. (Bridgewater).
1800, pp. 87-88. (Derby).
1800, pp. 88-89. (Ferrisburgh).
1800, pp. 90-91. (Orwell).
1800, pp. 91-92. (Lutterloch).
1800, pp. 92-93. (Royalton, Sharon).
1800, pp. 93-94. (Shoreham).
1800, pp. 94-95. (Underhill).
1800, pp. 95-97. (Whiting).
1800, pp. 106-107. (Glover).
1801, pp. 77-78. (Athens).
1801, p. 84. (Craftsbury).
1801, pp. 85-86. (Danville).
1801, pp. 86-87. (Fairfax).
1801, pp. 91-92. (Waterford).
1801, pp. 92-93. (Woodford).
1801, pp. 94-95. (Winhall).
1802-1804, 1802, pp. 58-60. (Leicester).
1802-1804, 1802, pp. 92-105. (Danville).
1802-1804, 1802, pp. 130-131. (Addison).
1802-1804, 1802, pp. 201-203. (Guildhall).
1802-1804, 1803, pp. 14-15. (Montgomery).
1802-1804, 1803, pp. 27-29. (Bridport).
1802-1804, 1803, pp. 33-35. (Topsham, Newbury).
1802-1804, 1803, pp. 104-105. (Moretown).
1802-1804, 1803, pp. 105-106. (Stratton, Wardsborough, Jamaica, Sunderland).
1802-1804, 1803, pp. 114-115. (Guildhall).
1802-1804, 1804, January, pp. 15-16. (Burke).
1802-1804, 1804, January, pp. 22-24. (Montpelier).
1802-1804, 1804, January, pp. 38-39. (Essex).
1802-1804, 1804, January, pp. 55-56. (Washington).

- 1804, October, pp. 9-10. (Topsham).
 1804, October, pp. 12-14. (Leicester).
 1804, October, pp. 30-31. (Irasburgh).
 1804, October, pp. 67-68. (Weybridge).
 1804, October, pp. 85-86. (Concord).
 1804, October, pp. 86-87. (Westfield).
 1804, October, pp. 118-119. (Moretown).
 1804, October, pp. 122-123. (Fairlee).
 1805-1807, 1805, pp. 19-20. (Peru, Mount Tabor).
 1805-1807, 1805, p. 46. (Newfane).
 1805-1807, 1805, pp. 77-78. (Pawlet).
 1805-1807, 1805, pp. 96-97. (Lutterloch).
 1805-1807, 1805, pp. 103-104. (Burke).
 1805-1807, 1805, pp. 135-136. (Panton).
 1805-1807, 1806, pp. 35-36. (Waterford).
 1805-1807, 1806, pp. 37-38. (Richford).
 1805-1807, 1806, pp. 84-85. (Topsham).
 1805-1807, 1806, pp. 89-90. (Panton).
 1805-1807, 1806, pp. 104-105. (Windham, Londonderry).
 1805-1807, 1806, pp. 125-127. (Norwich).
 1805-1807, 1807, pp. 22-24. (Westford).
 1805-1807, 1807, pp. 103-104. (Mount Holly).
 1805-1807, 1807, pp. 139-141. (Coventry, Coventry Gore).
 1805-1807, 1807, pp. 150-151. (Navy).
 1805-1807, 1807, p. 163. (Wheelock).
 1805-1807, 1807, pp. 189-200.
 1805-1807, 1807, pp. 202-203. (Reading).
 1808-1810, 1808, pp. 106-107. (New Huntington).
 1808-1810, 1808, pp. 118-119. (Vershire).
 1808-1810, 1808, pp. 149-150. (Lutterloch).
 1808-1810, 1809, pp. 62-63.
 1808-1810, 1809, pp. 64-65. (Waterford).
 1808-1810, 1809, pp. 84-85. (Stow).
 1808-1810, 1810, pp. 7-8. (Eden).
 1808-1810, 1810, pp. 62-64. (Enosburgh).
 1808-1810, 1810, pp. 75-76. (Richmond).
 1808-1810, 1810, pp. 76-77. (Marshfield).
 1808-1810, 1810, pp. 110-111. (Orange, Barre, Topsham).
 1808-1810, 1810, pp. 152-153.
 1808-1810, 1810, pp. 162-163. (Sheffield).
 1811-1814, 1811, pp. 20-21. (Mount Tabor).
 1811-1814, 1811, pp. 28-29. (Shoreham).
 1811-1814, 1811, pp. 43-44. (Cavendish).
 1811-1814, 1811, pp. 48-50. (Shelburne).
 1811-1814, 1811, pp. 62-63. (Troy).
 1811-1814, 1811, pp. 91-93. (Richford).
 1811-1814, 1811, pp. 152-153. (Jay).
 1811-1814, 1812, pp. 45-46. (Enosburgh).
 1811-1814, 1812, pp. 157-158. (Lutterloch).
 1811-1814, 1814, p. 99. (Sandgate).
 1817 (comp.), III, 305, 309. (Vershire).

1815-1818, 1815, p. 52. (Strafford).
 1815-1818, 1817, pp. 48-49. (Sandgate).
 1815-1818, 1817, pp. 56-57. (Barton).
 1815-1818, 1818, p. 253. (Wells).
 1815-1818, 1818, pp. 253-254. (Concord).
 1819-1821, 1821, p. 206. (Whiting).
 1819-1821, 1821, p. 212. (Vershire).
 1822-1826, 1822, p. 19.
 1822-1826, 1824, p. 26.
 1827-1831, 1829, p. 6.
 1835-1837, 1836, p. 147. (Lowell).
 1845-1848, 1848, pp. 11-13. (Stowe, Mansfield).
 1852-1854, 1853, p. 55. (Tinmouth).
 1855-1856, 1856, pp. 43-44.
 1868, pp. 275-276. (Stannard).
 1870, p. 528. (Stannard).

Section 8. Eminent Domain

1912, p. 26.
 1917, p. 10.
 1925, p. 3.
P. L., ch. 207, secs. 4974-4985, from 1933, S. S., No. 5, sec. 1-12.
 1935, pp. 3-4, 4-5, 163.
 1937, pp. 4-5, 89, 145-146, 281.
 1941, pp. 66-67.

Section 9. Ejectment

1787, pp. 7-8.
 1787R, p. 243.
 1794, pp. 101-103.
 1794-1796, 1795, pp. 14-15.
 1798, pp. 17-19.
 1799, October, pp. 11-12.
 1805-1807, 1805, pp. 127-129.
 1808-1810, 1810, pp. 108-110.
 1819-1821, 1821, pp. 208-209, 212-213, 214-215.
 1822-1826, 1822, pp. 76-77.
 1835-1837, 1835, pp. 147-148.
 1835-1837, 1836, pp. 136-138, 147-148.
 1845-1848, 1848, p. 18.
 1878, p. 103.
 1894, pp. 40-41.
 1906, pp. 591-592.

Section 10. Town Line Problems

1779, February, Slade, *State Papers*, pp. 324-325.
 Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1784, p. 11. (Providence, Barton).
 Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1784, p. 17.
 Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1784, p. 22. (Neshobe, Brandon).

- Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1784, pp. 28-29. (Shoream, Orwell, Hubbardton, Sudbury, Whiting).
- Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1784, pp. 43, 48. (Middletown, Wells, Tinmouth, Ira, Poultney).
- Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1784, p. 54.
- Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, p. 4. (Rochester, Brainerd, Royalton, Bethel).
- Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, pp. 9, 20, 24, 28. (Salem, Moortown).
- Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, pp. 33-34, 36. (Randolph).
- Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, p. 47. (Guildhall).
- Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, pp. 50-51. (Sharon, Strafford).
- Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, p. 51. (Royalton, Tunbridge).
- Jr. of the Gen. Assem., 1787, p. 44. (Hungerford, Smithfield, Fairfield).
- 1788, p. 9. (Mooretown, Bradford).
- 1790, p. 6. (Menden, Craftsbury).
- 1791, October, p. 5. (Newhaven, Vergennes).
- 1791, October, p. 6. (Weybridge).
- 1792, pp. 3-4. (Fairhaven, Westhaven).
- 1792, pp. 5-6. (Bakersfield, Knoulton's Gore, Smithfield, Fairfield).
- 1792, pp. 15-16. (Danville, Walden Gore, Walden).
- 1792, p. 20. (Tomlinson, Grafton).
- 1792, pp. 20-23. (Mount Holley, Jackson's Gore, Ludlow, Wallingford).
- 1792, p. 26. (Highgate, Alburgh).
- 1792, pp. 37-39. (Bradford).
- 1792, p. 71. (Sheldon, Hungerford).
- 1793, p. 5. (Barre, Wildersburgh).
- 1793, p. 6. (Cavendish, Baltimore).
- 1793, p. 7. (Wallingford, Tinmouth).
- 1793, pp. 48-49.
- 1794, pp. 55-57. (Burlington, Jericho, Williston, Newhuntington, Buel's and Avery's Gores, Richmond, Bolton).
- 1794, pp. 124-126. (Brookline, Putney, Athens).
- 1794-1796, 1795, p. 5. (New Huntington, Huntington).
- 1794-1796, 1795, p. 11. (Londonderry, Mark's Leg, Windham).
- 1794-1796, 1795, pp. 65-66. (Kent, Londonderry).
- 1794-1796, 1795, p. 68. (Parker's Gore, Goshen, Hancock, Philadelphia, Leicester).
- 1794-1796, 1796, pp. 53-55. (Newhaven, Vergennes, Waltham).
- 1794-1796, 1796, p. 56. (Cornwall, Middlebury).
- 1794-1796, 1796, p. 57. (Fairlee).
- 1796-1798, 1797, p. 48. (Monkton, Starksboro).
- 1796-1798, 1797, February, pp. 49-51. (Fairlee, West Fairlee).
- 1796-1798, 1797, October, pp. 21-22. (Windham, Londonderry).
- 1797, October, pp. 42-45. (Landgrove, Brumley).
- 1797R, pp. 292-293.
- 1797R, App., pp. 66-67. (Organized towns in 1792).
- 1797R, App., pp. 72-73. (Organized towns in 1797).

- 1797R, App., pp. 145-151.
1798, p. 38. (Wells, Poultney).
1798, pp. 40-41. (Knight's Gore, Bakersfield, Enosburgh).
1798, pp. 42-44. (South Hero, Middle Hero).
1798, pp. 56-57. (Goshen, Warren).
1798, pp. 97-103. (Goshen).
1799, pp. 14-15. (Andover, Weston, Benton's Gore).
1799, pp. 15-16. (Stratton Gore, Stratton).
1799, pp. 16-17. (Coit's Gore, Bakersfield).
1799, pp. 17-18. (Newbury, Topsham, Orange, Barre, Corinth, Washington, Williamstown).
1799, p. 82. (Windsor).
1800, pp. 28-29. (Sherburne, Killington).
1800, pp. 29-30. (Johnson's Gore, Acton).
1800, p. 85. (Bennington, Pownal).
1801, pp. 78-79. (Avery's Grant, Kelly's Grant, Missiskouie).
1801, pp. 82-83. (Brownington, Whitelaw's Gore, Caldersburgh, Morgan, Wenlock).
1801, p. 88. (Newbury, Topsham, Orange, Barre, Corinth, Washington, Williamstown).
1801, p. 95. (Norfolk, Canaan).
1802-1804, 1802, p. 3. (Hinsdale, Vernon).
1802-1804, 1802, pp. 32-33. (Isle of Mott, Vineyard).
1802-1804, 1802, p. 48. (Newbury, Topsham, Orange, Barre).
1802-1804, 1802, p. 118. (West Fairlee, Vershire, Thetford, Strafford).
1802-1804, 1802, pp. 158-160. (Berkshire, Enosburgh, Richford, Montgomery, Jay, Westfield).
1802-1804, 1803, pp. 6-7. (Missisquoie, Troy).
1802-1804, 1803, pp. 24-25. (Coventry).
1802-1804, 1803, pp. 25-26. (Bradley-Vale, Victory, Hopkinsville, Concord).
1802-1804, 1803, pp. 33-35. (Topsham, Newbury).
1802-1804, 1803, p. 49. (Berkshire, Enosburgh, Richford, Montgomery, Jay, Westfield).
1802-1804, 1803, pp. 68-69. (Harwich, Mount Tabor).
1802-1804, 1803, pp. 105-106. (Stratton, Sunderland, Wardsborough, Jamaica).
1802-1804, 1803, pp. 114-115. (Guildhall).
1802-1804, 1804, January, pp. 12-13. (Morgan, Wenlock).
1802-1804, 1804, January, p. 34. (Bromley, Peru).
1802-1804, 1804, January, pp. 45-46. (Vershire, Corinth).
1804, October, pp. 7-8. (Addison, Weybridge).
1804, October, pp. 16-17. (Londonderry, Mack's Leg, Windham).
1804, October, pp. 20-21. (Putney, Brookline).
1804, October, pp. 23-24. (Addison, Waltham).
1804, October, pp. 26-27. (Bolton, Richmond).
1804, October, pp. 121-122. (Parker's Gore, Medway, Parkerstown).
1805-1807, 1805, pp. 7-8. (Pomfret, Sharon).
1805-1807, 1805, pp. 19-20. (Peru, Mount Tabor).
1805-1807, 1805, pp. 127-129.
1805-1807, 1805, pp. 135-136. (Panton).
1805-1807, 1806, pp. 11-12. (Marvin's Gore, Huntsburgh, Highgate, Alburgh Gore).

- 1805-1807, 1806, pp. 28-29. (Panton, Weybridge).
 1805-1807, 1806, pp. 36-37. (Pittsfield, Rochester).
 1805-1807, 1806, pp. 104-105. (Windham, Londonderry).
 1805-1807, 1806, p. 120. (Hubbardton, Sudbury).
 1805-1807, 1806, pp. 120-121. (Vershire, Corinth).
 1805-1807, 1807, pp. 71-72. (Burke Tongue, Hopkinville, Kirby).
 1805-1807, 1807, pp. 117-118. (Westford, Underhill).
 1808-1810, 1808, p. 135. (Huntington, Bolton).
 1808-1810, 1809, pp. 62-63.
 1808-1810, 1809, pp. 93-94. (Pawlet, Rupert).
 1808-1810, 1810, pp. 79-80. (Wardsborough, Dover).
 1808-1810, 1810, pp. 92-93. (Ferrisburgh, Vergennes).
 1808-1810, 1810, pp. 96-98. (South Hero, Middle Hero).
 1808-1810, 1810, pp. 108-110. (Deweysburgh, Danville, Peacham).
 1808-1810, 1810, pp. 110-111. (Orange, Barre, Topsham).
 1808-1810, 1810, pp. 160-161. (Sheldon, Highgate, Swanton, Huntsburgh).
 1808-1810, 1810, pp. 169-170. (Middle Hero, Grand Isle).
 1811-1814, 1811, p. 30. (Vershire, Corinth).
 1811-1814, 1812, pp. 16-17. (Billymead, Sutton).
 1811-1814, 1813, pp. 124-125. (Brookline, Athens, Putney).
 1811-1814, 1813, p. 144. (Stockbridge, Pittsfield).
 1811-1814, 1814, pp. 52-53. (Windsor, West Windsor).
 1811-1814, 1814, p. 141. (Middlebury, Ripton).
 1811-1814, 1814, pp. 111-112. (Philadelphia, Goshen).
 1815-1818, 1815, pp. 11-12. (Lutterloh, Albany).
 1815-1818, 1815, pp. 67-68. (Windsor, West Windsor).
 1815-1818, 1815, p. 135. (Brookline, Athens).
 1815-1818, 1815, p. 167. (Avery's Gore, Athens, Grafton, Rockingham).
 1815-1818, 1816, pp. 38-39. (Duncansboro, Newport).
 1815-1818, 1816, p. 40. (Avery's Gore, Acton, Grafton, Athens).
 1815-1818, 1816, pp. 48-49. (Philadelphia, Chittenden, Goshen).
 1815-1818, 1816, pp. 95-96. (Fairfield, Swanton, St. Albans).
 1815-1818, 1816, p. 129. (Salem, Coventry, Newport).
 1815-1818, 1817, p. 28. (Huntsburgh, Franklin).
 1815-1818, 1817, pp. 33-34. (Bakersfield, Fairfield, Smithfield, Fletcher).
 1815-1818, 1817, p. 93. (Westford, Fairfax).
 1819-1821, 1820, p. 41. (Newfane, Brookline).
 1819-1821, 1820, pp. 41-42. (Goshen, Ripton).
 1819-1821, 1821, pp. 203-204. (North Hero, Islands annexed).
 1819-1821, 1821, p. 98. (Elmore).
 1819-1821, 1821, p. 213. (Rochester, Bethel).
 1822-1826, 1822, p. 35. (Waitsfield, Northfield).
 1822-1826, 1822, p. 35. (Sherburn, Parker's Gore).
 1822-1826, 1822, p. 36. (Pittsfield, Stockbridge, Sherburn).
 1822-1826, 1823, pp. 3-4. (Shrewsbury, Plymouth).
 1822-1826, 1823, p. 4. (Waitsfield, Northfield).
 1822-1826, 1824, p. 14. (Waterville, Coit's Gore, Johnson, Bakersfield, Knowlton's Gore, Belvidere Leg).
 1822-1826, 1824, p. 14. (Pittsfield, Rochester).
 1822-1826, 1824, p. 15. (Newark).
 1822-1826, 1824, p. 15. (Rochester, Braintree, Kingston).

- 1822-1826, 1824, pp. 16-17. (Warren, Lincoln).
1822-1826, 1824, p. 17. (Lincoln, Bristol).
1822-1826, 1824, p. 38.
1822-1826, 1825, p. 31. (Acton, Johnson's Gore).
1822-1826, 1825, p. 33. (Kelleyvale, Kelly's Grant No. 2, Lowell).
1822-1826, 1825, p. 33. (Charleston, Navy).
1822-1826, 1826, p. 21. (Concord).
1827-1831, 1827, p. 37. (Concord).
1827-1831, 1827, p. 38. (Sherburne, Pittsfield).
1827-1831, 1827, p. 38. (Mendon, Parkerstown).
1827-1831, 1828, p. 15. (Cambridge, Sterling).
1827-1831, 1828, pp. 15-16. (Eden, Belvidere).
1827-1831, 1829, p. 19. (Swanton, Fairfield).
1827-1831, 1829, p. 20. (Ripton, Middlebury).
1827-1831, 1829, p. 20. (Sherburne, Chittenden).
1827-1831, 1829, p. 21. (Chelsea, Brookfield).
1827-1831, 1830, p. 25. (Isle LaMott, Vineyard).
1827-1831, 1830, p. 26. (Brookfield, Minehead).
1827-1831, 1831, p. 11. (Lowell, Kellyvale).
1827-1831, 1831, p. 12. (Belvidere, Eden).
1828-1834, 1832, pp. 24-25. (Brighton, Random).
1828-1834, 1832, p. 26. (Ripton, Salisbury).
1828-1834, 1833, p. 26. (Kingston, Avery's Gore, Ripton, Warren).
1828-1834, 1834, p. 27. (Rochester, Hancock).
1828-1834, 1834, p. 28. (Danville, Cabot).
1828-1834, 1834, p. 28. (Granville, Kingston).
1835-1837, 1835, pp. 29-30. (Peru, Landgrove, Bromley).
1835-1837, 1835, pp. 147-148. (Ripton, Goshen).
1835-1837, 1836, pp. 38-39. (Swanton, Highgate).
1835-1837, 1837, pp. 10-11. (Elmore, Worcester).
1835-1837, 1837, p. 101. (Lemington, Canaan).
1838-1840, 1838, p. 7. (Monroe, Woodbury).
1838-1840, 1838, p. 14. (Enosburgh, Berkshire).
1838-1840, 1839, pp. 85-86. (Westminster, Athens).
1838-1840, 1839, pp. 86-87. (Underhill, Mansfield).
1838-1840, 1839, p. 87. (Thetford, Norwich).
1838-1840, 1839, pp. 87-88. (Whiting, Orwell).
1838-1840, 1840, pp. 54-55. (Walden, Monroe).
1838-1840, 1840, pp. 59-60. (Townshend, Acton).
1838-1840, 1840, p. 61. (Salisbury, Leicester).
1841-1844, 1841, p. 58. (Cavendish, Baltimore).
1841-1844, 1841, pp. 58-59. (Cambridge, Fairfax, Fletcher).
1841-1844, 1841, p. 61. (Coventry, Orleans).
1841-1844, 1842, p. 125. (Salisbury, Leicester).
1841-1844, 1842, p. 126. (Norton).
1841-1844, 1843, pp. 27-28. (Woodbury, Monroe).
1841-1844, 1843, p. 28. (Coventry, Orleans).
1841-1844, 1844, p. 4. (Putney, Dummerston).
1845-1848, 1846, pp. 10-11. (Athens, Rockingham, Grafton).
1845-1848, 1846, p. 11. (Northfield, Waitsfield).
1845-1848, 1846, p. 11. (Putney, Dummerston).

- 1845-1848, 1847, p. 7. (Orwell).
- 1845-1848, 1847, pp. 7-8. (Rochester, Goshen, Philadelphia, Hancock, Chittenden).
- 1845-1848, 1847, p. 8. (Avery's Gore, Lincoln).
- 1845-1848, 1847, pp. 8-9. (Orwell, Benson).
- 1845-1848, 1847, pp. 9-10. (Rochester, Hancock, Philadelphia, Goshen).
- 1845-1848, 1847, pp. 10-12. (Panton, Ferrisburgh).
- 1845-1848, 1848, pp. 5-7. (Montpelier, East Montpelier).
- 1845-1848, 1848, p. 8. (Windsor, West Windsor).
- 1845-1848, 1848, p. 9. (Rochester, Hancock, Philadelphia, Goshen).
- 1845-1848, 1848, p. 9. (Shelburne, St. George, Hinesburgh).
- 1845-1848, 1848, pp. 9-11. (Mount Tabor, Danby).
- 1845-1848, 1848, pp. 11-13. (Stowe, Mansfield).
- 1845-1848, 1848, p. 28.
- 1849-1851, 1849, pp. 26-27. (Pownal, Stamford).
- 1849-1851, 1850, p. 46. (Waterbury, Middlesex).
- 1849-1851, 1850, pp. 46-47. (Searsburgh, Wilmington).
- 1849-1851, 1850, pp. 163-164. (Waltham, New Haven).
- 1849-1851, 1851, p. 64. (Middlebury, Weybridge).
- 1849-1851, 1851, pp. 64-65. (Waterbury, Bolton, Stowe (formerly Mansfield)).
- 1849-1851, 1851, pp. 65-66. (Dover, Wardsboro, Somerset).
- 1849-1851, 1851, p. 67. (Sheldon, Fairfield).
- 1849-1851, 1851, p. 68. (Stockbridge, Pittsfield).
- 1849-1851, 1851, pp. 68-69. (Marlboro, Wilmington, Dover).
- 1852-1854, 1852, pp. 54, 64.
- 1852-1854, 1852, p. 65. (Wilmington, Searsburgh).
- 1852-1854, 1852, p. 66. (Marlboro, Wilmington, Dover).
- 1852-1854, 1852, p. 66. (Irasburgh, Lowell).
- 1852-1854, 1852, pp. 66-68. (Woodstock, Hartland, Hartford).
- 1852-1854, 1853, pp. 57-58. (Brighton, Ferdinand, Wenlock).
- 1852-1854, 1853, p. 58. (Wilmington, Searsburgh).
- 1852-1854, 1853, pp. 59-61. (Mansfield, Stowe).
- 1852-1854, 1854, p. 56. (Irasburgh, Lowell).
- 1852-1854, 1854, p. 57. (Ira, Clarendon).
- 1852-1854, 1854, pp. 57-58. (Pittsford, Brandon).
- 1852-1854, 1854, p. 59. (Goshen, Goshen Gores, Brandon).
- 1855-1856, 1855, pp. 68-70. (Cabot).
- 1855-1856, 1855, pp. 74-75. (Plainfield, Goshen Gore, Harris' Gore).
- 1855-1856, 1855, pp. 75-76. (Chittenden, Brandon).
- 1855-1856, 1855, pp. 76-79. (Sterling, Johnson, Morristown, Stowe, Cambridge).
- 1855-1856, 1856, pp. 76-78. (Sterling, Johnson, Cambridge, Morristown).
- 1855-1856, 1856, pp. 78-79. (Addison, Weybridge).
- 1855-1856, 1856, pp. 91-92. (Concord, Victory, Bradleyvale, Kirby).
- 1857-1858, 1858, pp. 48-49. (Montgomery, Lowell).
- 1857-1858, 1858, pp. 49-50. (Wilmington, Stratton, Somerset, Dover, Wardsboro).
- 1857-1858, 1858, pp. 50-51. (Montgomery, Avery's Gore).
- 1857-1858, 1858, p. 51. (Barton, Sheffield).
- 1859-1860, 1859, pp. 148-149. (Addison, Weybridge, Bridport).

- 1859-1860, 1859, pp. 149-151. (Sterling).
1859-1860, 1860, p. 164. (Manchester, Winhall).
1861-1863, 1861, pp. 41-42. (Belvidere).
1861-1863, 1861, pp. 42-43. (Stowe, Underhill).
1861-1863, 1863, pp. 51-52. (Addison, Weybridge).
1866, p. 275. (Belvidere, Bakersfield, Avery's Gore).
1867, pp. 66-67. (Stannard, Goshen Gore).
1868, p. 309. (Milton, Colchester).
1868, p. 310. (Newport, Derby).
1868, pp. 310-311. (Dover, Wilmington).
1869, pp. 55-56. (Stannard).
1869, pp. 288-289. (Lincoln, Ripton).
1869, p. 289. (Dover, Wilmington).
1870, pp. 77-78.
1870, pp. 568-569. (Putney, Dummerston).
1870, p. 569. (Canaan, Lemington).
1870, p. 570. (Albany, Lowell).
1870, pp. 570-571. (Hydepark, Morristown).
1870, p. 571. (Westminster).
1870, pp. 572-573. (Mount Holly, Weston).
1874, pp. 380-381. (Plainfield, Goshen Gore No. 2).
1874, p. 382. (Westminster).
1876, pp. 373-374. (Westminster).
1876, p. 380. (Fair Haven).
1878, pp. 219-220. (Vershire, Ely).
1880, pp. 231-232. (Woodstock, Pomfret).
1880, pp. 236-238. (Derby, Salem).
1882, p. 265. (Ely, Vershire).
1884, p. 252. (Norton).
1884, pp. 269-270. (Middletown, Middletown Springs).
1884, p. 270. (Parker's Gore, Stockbridge, Sherburne).
1886, pp. 88-91. (Proctor).
1886, pp. 91-93. (West Rutland).
1890, pp. 276-277. (Harris' Gore, Groton, Marshfield).
1892, p. 395.
1892, pp. 427-428. (Putney, Dummerston).
1894, p. 406. (Newport, Coventry Gore, Coventry).
1894, pp. 406-407. (Hancock).
1896, p. 92. (Belvidere, Avery's Gore).
1896, pp. 179-210. (City of St. Albans).
1898, pp. 116-118. (Hyde Park, Morristown).
1898, pp. 118-120. (Berlin, Montpelier, East Montpelier).
1900, pp. 97-101.
1900, p. 386.
1902, pp. 353-382. (City of St. Johnsbury).
1904, p. 412. (Ira, Castleton).
1906, p. 257. (Moretown, Middlesex).
1906, p. 725. (East Montpelier).
1908, pp. 183-185. (Monkton, Starksboro).
1910, pp. 119-122.
1912, pp. 339-341. (Bristol, Ripton).

- 1921, p. 329. (City of Winooski, Colchester).
1937, p. 320. (Buel's Gore, Huntington).
1939, p. 92.
1941, p. 318. (Rutland, City of Rutland).

Section 11. County Line Changes

- Jr. of the Gen. Assem., 1778, March, Slade, *State Papers*, pp. 260, 264, 266.
1779, February, Slade, *State Papers*, pp. 294-295.
1787R, 1787, October, p. 204.
1792, pp. 20-23, 29-34.
1794, p. 91.
1794-1796, 1796, pp. 8, 51.
1797R, pp. 129-133, 605, 609, 613-614.
1798, pp. 44-45.
1799, pp. 12-14.
1800, pp. 21-22.
1802-1804, 1802, pp. 141-143.
1805-1807, 1805, pp. 19-20, 112-114.
1805-1807, 1806, pp. 36-37.
1808-1810, 1810, pp. 101-103.
1811-1814, 1811, pp. 3-6.
1811-1814, 1813, p. 144.
1811-1814, 1814, pp. 83-84, 111-112.
1819-1821, 1820, pp. 37-40, 42.
1819-1821, 1821, pp. 98, 99.
1822-1826, 1823, pp. 75-76.
1822-1826, 1824, p. 15.
1822-1826, 1826, p. 21.
1827-1831, 1827, p. 37.
1827-1831, 1829, p. 13.
1828-1834, 1834, p. 27.
1835-1837, 1835, pp. 30-31, 32.
1835-1837, 1836, pp. 14-17, 34.
1841-1844, 1842, pp. 124, 126.
1845-1848, 1847, pp. 7, 8-9.
1845-1848, 1848, p. 28.
1852-1854, 1852, p. 64.
1855-1856, 1855, pp. 68-70, 74-75.
1884, p. 270.
1937, p. 5.

Section 12. Gores

- 1792, pp. 15-16, 20-23.
1794, pp. 55-57.
1794-1796, 1795, p. 68.
1797R, App. pp. 146-149, 151.
1798, pp. 40-41, 56-57, 97-103.
1799, pp. 14-15, 15-16, 16-17.
1800, pp. 29-30.
1801, pp. 78-79, 82-83.
1802-1804, 1802, pp. 158-160.

- 1802-1804, 1803, pp. 25-26, 49.
1804, October, pp. 121-122.
1805-1807, 1806, pp. 11-12.
1805-1807, 1807, pp. 71-72, 139-141.
1815-1818, 1815, p. 167.
1815-1818, 1816, pp. 40, 129.
1822-1826, 1822, p. 35.
1822-1826, 1824, p. 14.
1822-1826, 1825, p. 31.
1827-1831, 1831, pp. 59-60.
1828-1834, 1833, p. 26.
1841-1844, 1844, p. 6.
1845-1848, 1846, p. 6.
1845-1848, 1847, p. 8.
1849-1851, 1850, pp. 49-51.
1849-1851, 1851, pp. 62-64.
1852-1854, 1852, p. 63.
1852-1854, 1854, p. 59.
1855-1856, 1855, pp. 67-68, 74-75.
1857-1858, 1858, pp. 49-51.
1859-1860, 1860, pp. 34, 164.
1861-1863, 1862, pp. 40-43.
1865, pp. 31-34, 249-251.
1866, p. 275.
1867, pp. 66-67.
1869, pp. 290-292.
1870, pp. 563-564.
1872, pp. 96, 660-661.
1874, pp. 380-381, 393-394.
1876, pp. 88-89, 392-396.
1878, pp. 228-230.
1880, pp. 255-256.
1882, pp. 24-25, 275-276.
1884, pp. 270, 271-272.
1886, pp. 7, 206-209.
1888, pp. 64-65, 67-68.
1890, pp. 276-277.
1894, p. 406.
1896, p. 92.
1902, pp. 155, 157-158.
1906, pp. 57-61, 65-66.
1908, pp. 22-23.
1912, p. 4.
1915, pp. 96-97.
1937, pp. 320, 334-335, 354-355.
1941, pp. 354-355.

Section 13. Local Officers

- 1779, February, Slade, *State Papers*, pp. 297-298.
1787R, 1782, October, p. 179.
1787, October, pp. 7-8, 8-12.

- 1794-1796, 1794, pp. 101-103.
1794, pp. 114-116.
1794-1796, 1795, pp. 14-15.
1797R, pp. 493-499, 569; App. pp. 78f.
1798, pp. 10, 17-19.
1796-1798, 1798, pp. 33-36.
1799, pp. 11-12.
1800, pp. 33-34, 89-90, 117.
1802-1804, 1803, pp. 82-83, 145-146.
1804, October, pp. 115-118.
1805-1807, 1805, pp. 72-73, 127-129, 136-137, 199-200.
1805-1807, 1806, pp. 37-38, 89-90, 104-105.
1805-1807, 1807, pp. 180-186, 189-200.
1808-1810, 1808, pp. 150, 157-158.
1808-1810, 1809, pp. 64-65.
1808-1810, 1810, pp. 92-93, 108-110, 160-161.
1811-1814, 1811, pp. 42-43, 48-50, 91-93.
1811-1814, 1813, pp. 172-174.
1811-1814, 1814, pp. 50-51, 77-78, 82-83, 99.
1815-1818, 1815, pp. 13, 52.
1815-1818, 1816, pp. 95-96, 116-118.
1815-1818, 1817, pp. 48-49, 84-85, 116-117.
1815-1818, 1818, pp. 84-85, 250-253.
1819-1821, 1819, pp. 26, 79, 126-127, 168-169, 173-174, 179-180.
1819-1821, 1820, pp. 70, 163-164.
1819-1821, 1821, pp. 23-24, 26-27, 128, 163-164, 206-208.
1822-1826, 1822, pp. 76-77.
1822-1826, 1823, pp. 10, 44-45, 93.
1822-1826, 1824, pp. 100-102, 123-124.
1822-1826, 1825, pp. 10-21, 44, 46, 135-136.
1822-1826, 1826, p. 38.
1827-1831, 1827, pp. 19-28.
1827-1831, 1828, p. 8.
1827-1831, 1829, pp. 9, 34-35, 74-77.
1835-1837, 1835, pp. 147-148.
1841-1844, 1841, pp. 10-17.
1852-1854, 1852, pp. 61-62, 64, 85-103.
1855-1856, 1855, p. 87.
1857-1858, 1858, pp. 51-52.
1859-1860, 1859, pp. 50-51.
1864, pp. 107-124.
1865, pp. 191-204.
1866, pp. 221-228.
1867, p. 57.
1868, p. 32.
1869, p. 39.
1870, pp. 38-44, 77-78, 519-522.
1872, pp. 543-581.
1874, pp. 152-157.
1876, pp. 88-89.
1878, pp. 103, 104.

1880, pp. 108-109.
1880, p. 156.
1882, pp. 40, 41.
1884, pp. 4-5, 267-268.
1886, p. 214.
1888, pp. 6-7, 9-52, 52-53, 312.
1896, p. 10.
1898, pp. 38, 388.
1900, p. 355.
1906, p. 19.
1908, pp. 22-23, 45-46.
1915, pp. 96-97.
1923, p. 170.
1925, p. 48.
1929, p. 67.
1931, pp. 253-255.
1933, pp. 14, 72, 90, 245.
1935, pp. 107, 114-115.
1937, pp. 85-86, 105, 110.
1939, pp. 92, 108-109.
1943, p. 73.

Section 14. State Taxes³

Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1784, p. 45.
1785, October, (MS copy), no p.
1792, p. 28.
1793, p. 18.
1794, pp. 121-122.
1795, p. 14.
1796, p. 7.
1797R, App., pp. 71-79.
1796-1798, 1798, pp. 33-36, 63.
1799, p. 102.
1800, pp. 101-102, 117.
1801, p. 45.
1802-1804, 1802, pp. 108-109.
1802-1804, 1803, p. 107.
1804, October, p. 64.
1805-1807, 1805, p. 48.
1805-1807, 1806, pp. 12-13, 56-57.
1805-1807, 1807, pp. 101-102.
1808-1810, 1808, pp. 100-101.
1808-1810, 1809, pp. 100-101.
1808-1810, 1810, pp. 148-149.
1811-1814, 1811, p. 54.
1811-1814, 1812, pp. 113-114, 174, 192.
1811-1814, 1813, pp. 184-185, 203.
1811-1814, 1814, p. 88.

3. This list does not include state land taxes for roads and bridges, which are to be found in Section 16.

- 1815-1818, 1815, pp. 92-93.
1815-1818, 1816, p. 77.
1815-1818, 1817, pp. 97-98.
1815-1818, 1818, pp. 104-105.
1819-1821, 1819, p. 38.
1819-1821, 1820, p. 31.
1821, p. 102.
1822-1826, 1822, p. 33.
1822-1826, 1823, p. 20.
1822-1826, 1824, p. 34.
1822-1826, 1825, p. 34.
1822-1826, 1826, p. 24.
1827-1831, 1827, p. 35.
1827-1831, 1828, p. 14.
1827-1831, 1829, pp. 9, 19.
1827-1831, 1830, p. 25.
1827-1831, 1831, pp. 28-29.
1828-1834, 1832, pp. 23-24.
1828-1834, 1833, p. 25.
1828-1834, 1834, p. 27.
1835-1837, 1835, p. 26.
1835-1837, 1836, p. 40.
1835-1837, 1837, p. 18.
1838-1840, 1838, p. 18.
1838-1840, 1839, p. 15.
1838-1840, 1840, p. 52.
1841-1844, 1841, p. 29.
1841-1844, 1842, p. 115.
1841-1844, 1843, p. 27.
1841-1844, 1844, p. 26.
1845-1848, 1845, p. 32.
1845-1848, 1846, p. 41.
1845-1848, 1847, pp. 34-35.
1845-1848, 1848, p. 34.
1849-1851, 1849, p. 20.
1849-1851, 1850, p. 51.
1849-1851, 1851, p. 48.
1852-1854, 1852, pp. 60-61.
1852-1854, 1853, pp. 47-48.
1852-1854, 1854, pp. 68-69.
1855-1856, 1855, pp. 84-85.
1855-1856, 1856, pp. 63-65.
1857, pp. 79-80.
1857-1858, 1858, pp. 60-61.
1859-1860, 1859, pp. 63-64.
1859-1860, 1860, pp. 52-53.
1861-1863, 1861, pp. 72-73; Extra Sess., p. 189.
1861-1863, 1862, pp. 65-66.
1861-1863, 1863, pp. 50-52.
1864, pp. 94-96.
1865, pp. 56-58.

1866, pp. 77-80.
1867, pp. 80-82.
1868, pp. 58-60.
1869, pp. 57-60.
1870, pp. 146-150.
1872, pp. 121-123.
1874, pp. 121-123.
1876, pp. 220-222.
1878, pp. 126-127.
1880, pp. 136-137.
1882, pp. 110-111.
1884, p. 3.
1886, pp. 3-4.
1888, pp. 4-5.
1890, p. 4.
1892, pp. 402-403.
1894, pp. 6-7.
1896, pp. 8-9.
1898, pp. 8-9.
1900, pp. 7-8.

Section 15. County Taxes

1792, pp. 16-17.
1793, pp. 54-55.
1800, pp. 32-33.
1801, pp. 61-63.
1802-1804, 1802, pp. 8-9, 57-58, 114-116.
1802-1804, 1803, pp. 145-146.
1802-1804, 1804, January, pp. 3-4, 41-42.
1805-1807, 1805, pp. 136-137, 199-200.
1805-1807, 1806, pp. 4-6, 68-70, 95-96, 102-104.
1805-1807, 1807, pp. 12-15, 20-21, 65-66, 72-73, 114-116.
1808-1810, 1808, pp. 150, 157-158.
1808-1810, 1809, pp. 57-59, 89-90.
1808-1810, 1810, pp. 27-28, 86-87.
1811-1814, 1811, pp. 82-83.
1811-1814, 1812, pp. 109-110.
1811-1814, 1813, pp. 33-34.
1811-1814, 1814, pp. 21, 97-98, 123.
1815-1818, 1815, pp. 39-40, 166-167.
1815-1818, 1816, pp. 22-23, 36-37, 43-44, 82-83, 124-125.
1815-1818, 1817, pp. 98, 111-112, 114-115.
1815-1818, 1818, p. 255.
1819-1821, 1819, pp. 126-130.
1819-1821, 1820, pp. 116-117.
1819-1821, 1821, pp. 163-167.
1822-1826, 1822, pp. 64-65.
1822-1826, 1823, pp. 63-65.
1822-1826, 1824, pp. 62-63.
1822-1826, 1825, pp. 54-56.
1827-1831, 1827, p. 63.

- 1827-1831, 1829, p. 42.
1827-1831, 1830, p. 45.
1827-1831, 1831, pp. 58-60.
1828-1834, 1833, p. 49.
1835-1837, 1837, p. 76.
1838-1840, 1839, pp. 75-76.
1841-1844, 1841, p. 44.
1841-1844, 1842, p. 114.
1841-1844, 1844, pp. 25-26.
1845-1848, 1845, p. 33-34.
1845-1848, 1846, pp. 6-10.
1845-1848, 1847, pp. 5-6.
1845-1848, 1848, pp. 3-4.
1849-1851, 1849, pp. 27-28.
1849-1851, 1850, pp. 49-51.
1849-1851, 1851, pp. 62-64.
1852-1854, 1852, pp. 68-72.
1852-1854, 1853, pp. 50-55.
1852-1854, 1854, pp. 63-67.
1855-1856, 1855, pp. 61-67.
1855-1856, 1856, pp. 92-99.
1857-1858, 1857, pp. 65-71.
1857-1858, 1858, pp. 55-57.
1859-1860, 1859, pp. 52-60.
1859-1860, 1860, pp. 55-59.
1861-1863, 1861, pp. 44-45.
1861-1863, 1862, pp. 49-50.
1861-1863, 1863, pp. 43-46.
1864, pp. 86-87.
1865, pp. 163, 245-247.
1866, pp. 289-295.
1867, pp. 307-308.
1868, pp. 301-308.
1869, pp. 276-288.
1870, pp. 544-555, 557-562.
1872, pp. 113-114, 649-660.
1874, pp. 385-392.
1876, pp. 381-392.
1878, pp. 224-228.
1880, pp. 246-254.
1882, pp. 24-25, 268-271, 274-275.
1884, pp. 272-273.
1886, pp. 205-209.
1888, pp. 315-316.
1890, p. 276.
1892, S.S., p. 25.
1892, pp. 403-407.
1894, pp. 118-121.
1896, pp. 96-97, 102.
1898, pp. 373-377.
1900, pp. 82-85.

- 1902, pp. 156-161.
 1904, pp. 87, 225-226, 230-231.
 1906, pp. 246-254.

Section 16. Tax Exemption

- 1779, February, Slade, *State Papers*, pp. 297-298.
 1808 (comp.), II, 1779, February, p. 302.
 1797R, 1781, April, App. pp. 28-32.
 1781, October, Slade, *State Papers*, p. 440.
 1808 (comp.), II, 1782, October, pp. 305-309.
 1797R, 1783, October, App. pp. 37-41.
 Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1784, pp. 46-48.
 1797R, 1784, October, App., pp. 48-53.
 Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, p. 4.
 Records of the Governor and Council, 1785, June, III, 75.
 1786, October, Slade, *State Papers*, p. 509.
 1808 (comp.), 1787, February, II, 315-319, 412-414.
 1787, October, pp. 8-12.
 1791, January, p. 19.
 1797R, 1791, October, App., pp. 61-64.
 1794-1796, 1794, pp. 11, 21, 23, 38, 53, 83, 140-141, 148, 152, 154.
 1808 (comp.), 1794, II, 320-324.
 1794-1796, 1795, pp. 25-26, 33-37, 41-55, 71-73.
 1796, pp. 16-24.
 1794-1796, 1796, pp. 136ff.
 1797R, February, pp. 565-576.
 1797R, October, App., pp. 71-79.
 1796-1798, 1797, pp. 36-38, 97ff.
 1796-1798, 1798, pp. 69-72, 137-141.
 1799, pp. 26-29, 72-74, 126-127.
 1800, pp. 89-90, 128-150.
 1801, pp. 50-54, 123-163.
 1802-1804, 1802, pp. 5-6, 13-14, 16-26, 28-31, 33-38, 52-55, 85-86, 90-91, 112-113, 116-118, 123-127, 128-130, 146-147, 149-151, 163-164, 166-169, 186-188, 192-193.
 1802-1804, 1803, pp. 4-13, 18-21, 23-24, 26-27, 29-32, 37-40, 42-44, 48-49, 59-60, 62-68, 71-76, 80-81, 88-89, 102, 110-116, 123-124, 124-128, 136-141.
 1802-1804, 1804, January, pp. 20-21, 25-30, 32-33, 36-38, 43, 46-48.
 1804, October, pp. 15-16, 19-26, 35-41, 44-48, 58-59, 73-74, 80-82, 90-91, 97-99, 115-118.
 1804, October, pp. 140-142.
 1805-1807, 1805, pp. 3-4, 6-7, 9-10, 14-15, 27-28, 32, 37-38, 43-45, 73-74, 80-81, 90-94, 96, 99-102, 109-112, 117-119, 131-132, 140-142, 144-145, 210-212, 217, 218-219, 225-228, 243.
 1805-1807, 1806, pp. 4-6, 8-10, 14-15, 20-21, 26-27, 29-30, 33-34, 38-39, 41-45, 49-52, 55, 57-58, 60-61, 68-70, 74-75, 75-76, 82, 83, 94-95, 95-96, 102-104, 107-108, 121-123, 147-148, 152-153, 172-174.
 1805-1807, 1807, pp. 4-5, 8, 12, 15-20, 34-36, 50-51, 56-61, 64-68, 70, 74-77, 80-91, 97-98, 102-104, 116-117, 155, 160-161, 166, 173-175, 189-200.
 1808-1810, 1808, pp. 7, 12-14, 20-25, 28-33, 55-60, 66-70, 75-79, 87-89, 117, 128, 131, 134, 144-145, 147-148, 153-154, 168-169, 181-182.

- 1808-1810, 1809, pp. 6-8, 10, 26-28, 30-32, 35-36, 53, 61-62, 66-67, 69-71, 77-78, 80, 82-83, 89-91, 103-105, 107, 114-115.
- 1808-1810, 1810, pp. 8-9, 17-22, 25-26, 29, 35-42, 46, 54-55, 57-59, 77-78, 85, 111-112, 122-124, 147-150, 159-160, 163-164.
- 1811-1814, 1811, pp. 14-15, 18-19, 24-25, 36-37, 44-46, 51-53, 55, 60-61, 63-64, 66-70, 72-73, 76-78, 84-85, 87-90, 95-97, 101, 105-106, 109, 126-127, 146-147, 151-154, 162.
- 1811-1814, 1812, pp. 3, 24-26, 37-38, 40-41, 43-44, 46, 49-50, 57, 64-65, 98-101, 156, 178-191, 195.
- 1811-1814, 1813, pp. 26-27, 35-36, 52-53, 60-61, 101-102, 110-111, 118, 123-124, 145-148, 161, 164.
- 1811-1814, 1814, pp. 21-24, 30-31, 34-35, 55, 82-83.
- 1815-1818, 1815, pp. 21, 33, 34-35, 37-38, 47, 51, 53, 56-57, 61, 102-103, 107-108, 127-129, 131-135, 137-138, 149-150, 169-170.
- 1815-1818, 1816, pp. 16, 19, 21-22, 27-28, 30-32, 35-36, 39-41, 45-46, 54, 71-77, 88-89, 94-95, 100-101, 122.
- 1815-1818, 1817, pp. 11, 15, 25-26, 30-31, 35, 44-47, 49, 55, 72-73, 79-81, 105, 118-119.
- 1815-1818, 1818, pp. 163-181.
- 1819-1821, 1819, pp. 26, 105-126, 155-156.
- 1819-1821, 1820, pp. 93-116, 153-155.
- 1819-1821, 1821, pp. 69-70, 149-162, 190-191.
- 1822-1826, 1822, pp. 55-64, 67-68, 76-77.
- 1822-1826, 1823, pp. 47-62, 69-70, 75-76.
- 1822-1826, 1824, pp. 53-62, 64-65, 79-80.
- 1822-1826, 1825, pp. 11-12, 48-54.
- 1822-1826, 1826, pp. 38-50, 90-91.
- 1827-1831, 1827, pp. 12, 51-62.
- 1827-1831, 1828, pp. 27-38, 40-41.
- 1827-1831, 1829, pp. 37-42, 66-68, 68-69.
- 1827-1831, 1830, pp. 38-44, 46.
- 1827-1831, 1831, pp. 46-56, 56-57, 103-104, 108-109.
- 1828-1834, 1832, pp. 42-49.
- 1828-1834, 1833, pp. 24, 40-49, 87-88, 89-90.
- 1828-1834, 1834, pp. 48-54, 74-76, 77-79, 98.
- 1835-1837, 1835, pp. 47-52, 141.
- 1835-1837, 1836, pp. 66-71.
- 1835-1837, 1837, pp. 76-83.
- 1838-1840, 1838, pp. 72-74, 74-75, 97-103.
- 1838-1840, 1839, pp. 69-70, 71-72, 73-77.
- 1838-1840, 1840, pp. 42, 45-47.
- 1841-1844, 1841, pp. 10-17, 44-50.
- 1841-1844, 1842, pp. 115-117.
- 1845-1848, 1848, p. 3.
- 1849-1851, 1850, pp. 16-17.
- 1849-1851, 1851, p. 140.
- 1852-1854, 1853, pp. 48-49, 83-85, 88-90.
- 1852-1854, 1854, pp. 76-78.
- 1855-1856, 1855, pp. 46-47.
- 1855-1856, 1856, pp. 99-103.
- 1857-1858, 1857, pp. 160-162.

- 1859-1860, 1859, pp. 151-152.
 1859-1860, 1860, pp. 28-29.
 G. S., (1862), ch. 83, secs. 6, 44.
 1861-1863, 1863, p. 47.
 1876, pp. 88-89, 251-253.
 1878, p. 98.
 R. L., sec. 270, VI.
 1884, pp. 4-5.
 1886, p. 73.
 1894, p. 133.
 V. S., sec. 362, VII.
 1896, p. 10.
 1898, pp. 10-11.
 1902, pp. 9-10.
 1904, pp. 21-22, 28, 415-416, 425-427.
 1906, pp. 19, 20, 21-22, 596-597, 602, 729-730.
 P. S., sec. 496, VI.
 1908, pp. 22-23.
 1910, pp. 23-24.
 1912, pp. 32, 408, 558.
 1915, pp. 93, 96-97, 378, 535.
 1917, pp. 33, 35-36.
 G. L., ch. 38, sec. 684, VI.
 1919, pp. 33, 34-36.
 1921, pp. 33-34, 262.
 1923, pp. 163, 265-266.
 1925, p. 52.
 1927, pp. 18-19.
 1933, pp. 13-14.
 1935, pp. 28-29, 78-79, 265-266.
 1937, pp. 18, 19, 89, 126-127.
 1939, pp. 298-299, 422.
 1941, pp. 10-11.
 1943, pp. 24-25.
 1945, pp. 268-269, 358-359, 367-368.

Section 17. University of Vermont

- Jr. of the Gen. Assem., 1778, March, Slade, *State Papers*, p. 273.
 Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, pp. 26, 29, 34.
 1785, June, Slade, *State Papers*, p. 497.
 Records of the Governor and Council, III, 107-108, n. 2.
 1787, pp. 7-8.
 1791, October, pp. 29-30.
 1800, p. 40.
 1802-1804, 1802, pp. 156-158.
 1808-1810, 1808, pp. 49-50, 97-98.
 1808-1810, 1810, pp. 117-120.
 1811-1814, 1811, pp. 91-93.
 1815-1818, 1814, pp. 111-112.
 1815-1818, 1816, pp. 48-49.
 1822-1826, 1823, p. 27.

1827-1831, 1828, pp. 11-12.
 1827-1831, 1831, pp. 38, 56-57.
 1828-1834, 1832, p. 38.
 1828-1834, 1834, pp. 64-66.
 1835-1837, 1836, p. 147.
 1845-1848, 1845, p. 52.
 1849-1851, 1850, pp. 16-17.
 1861-1863, 1861, pp. 41-42.
 1861-1863, 1862, p. 67.
 1861-1863, 1863, pp. 36, 61-67.
 1864, pp. 101-105, 106-107.
 1865, pp. 96-102.
 1866, pp. 97-98, 105.
 1876, pp. 88-89.
 1878, pp. 56-57.
 1908, pp. 22-23.
 1910, p. 24.
 1912, pp. 4, 645-656.
 1915, pp. 96-97.
 1925, p. 52.
 1935, pp. 78-79.
 1937, pp. 89, 108-109.
 1943, pp. 90-91.
 1945, pp. 98-100, 369-370.

Section 18. S.P.G.

1787, pp. 7-8.
 1794-1796, 1794, pp. 114-116.
 1796-1798, 1797, p. 48.
 1801, pp. 92-93.
 1805-1807, 1805, pp. 19-20.
 1811-1814, 1811, pp. 48-50.
 1815-1818, 1818, p. 85.
 1819-1821, 1819, pp. 26-27, 40-41.
 1819-1821, 1820, p. 32.
 1822-1826, 1823, pp. 31, 39.
 1822-1826, 1824, pp. 32, 38.
 1822-1826, 1825, pp. 34-35.
 1827-1831, 1829, p. 32.
 1868, pp. 45, 133-134.
 1869, pp. 248-251.
 1876, pp. 88-89.
 1878, pp. 161-162.
 1880, pp. 168-169.
 1894, pp. 113-114, 275.
 1898, pp. 35-36.
 1908, pp. 22-23.
 1915, pp. 96-97.
 1937, p. 89.

Section 19. Grammar Schools

a. Acts Involving Lease Lands.

1787R, 1782, October, p. 179.

1785, October, p. 8. (MS copy.)

Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, pp. 9-10, 22, 34, 41.

(Windsor Co. Gr. Sch., Norwich).

1797R, 1787, October, App. pp. 145-151. (Rutland Co. Gr. Sch., Castleton).

1787R, p. 201.

1787R, p. 310. (Athens Gr. Sch., Windham-Hall).

1792, October, pp. 14-15. (Cavendish Gr. Sch., Cavendish Academy).

1792, October, pp. 25-26. (Athens Gr. Sch.).

1793, pp. 76-77. (Athens Gr. Sch.).

1794-1796, 1794, pp. 113-114. (Windsor Co. Gr. Sch.).

1794-1796, 1795, pp. 12-14. (Caledonia Co. Gr. Sch., Peacham).

1794-1796, 1795, pp. 14-15.

1796-1798, 1797, pp. 36-38. (Addison Co. Gr. Sch., Middlebury).

1797R, pp. 493-499.

1799, pp. 18-20. (Franklin Co. Gr. Sch., St. Albans).

1800, pp. 40-42. (Montpelier Academy).

1801, pp. 50-54. (Windham Co. Gr. Sch., New Fane, Windham Hall).

1801, pp. 54-56. (Chittenden Co. Gr. Sch., Waterbury).

1801, pp. 56-57. (Orange Co. Gr. Sch.).

1802-1804, 1802, pp. 152-153. (Orange Co. Gr. Sch., Newbury, Brookfield).

1802-1804, 1803, pp. 96-99. (St. Albans).

1804, October, pp. 140-142. (Dorset Gr. Sch.).

1805-1807, 1805, pp. 39-40. (Rutland Co. Gr. Sch., Castleton).

1805-1807, 1805, pp. 218-219. (Essex Co. Gr. Sch., Guildhall).

1805-1807, 1805, pp. 225-228. (Orange Co., Randolph Gr. Sch.).

1805-1807, 1806, pp. 153-157. (Orange Co. Gr. Sch., Randolph).

1805-1807, 1807, pp. 173-175. (Windsor Co. Gr. Sch., Norwich).

1805-1807, 1807, pp. 200-202. (Windsor Co. Gr. Sch., Royalton).

1808-1810, 1808, pp. 46-49. (Franklin Co. Gr. Sch., Fairfield).

1808-1810, 1810, pp. 93-94. (Orange Co. Gr. Sch.).

1811-1814, 1811, pp. 91-93. (Richford).

1811-1814, 1812, pp. 65-71. (Orleans Co. Gr. Sch., Craftsbury, Brownington).

1811-1814, 1813, pp. 137-141. (Jefferson Co. Gr. Sch., Montpelier).

1811-1814, 1814, p. 8. (Orleans Co. Gr. Sch., Brownington, Craftsbury).

1811-1814, 1814, pp. 78-79. (Rutland Co. Gr. Sch.).

1811-1814, 1814, pp. 83-84. (Jefferson Co. Gr. Sch., Washington Co. Gr. Sch.).

1815-1818, 1814, pp. 111-112. (Philadelphia, Goshen, Chittenden).

1815-1818, 1815, pp. 62-63. (Franklin Co. Gr. Sch., St. Albans).

1815-1818, 1816, pp. 48-49. (Philadelphia, Goshen, Chittenden).

1815-1818, 1817, p. 58. (Windsor Co., Royalton Academy).

1819-1821, 1819, pp. 155-156. (Thetford Academy).

1819-1821, 1820, pp. 37-40. (Orleans Co. Gr. Sch.).

1819-1821, 1820, pp. 153-155. (Bradford Academy).

1819-1821, 1820, pp. 161-162. (Orange Co. Gr. Sch., Thetford Academy).

1819-1821, 1821, p. 99. (Westmore).

1819-1821, 1821, pp. 208-209. (Thetford Academy, Orange Co. Gr. Sch.).

1819-1821, 1821, pp. 212-213. (Washington Co. Gr. Sch.).

- 1819-1821, 1821, p. 214. (Orleans Co. Gr. Sch.).
- 1819-1821, 1821, pp. 214-215. (Washington Co. Gr. Sch.).
- 1822-1826, 1822, pp. 68, 71-72. (Orange Co. Gr. Sch., Bradford).
- 1822-1826, 1822, pp. 76-77. (Windham Co., Londonderry Gr. Sch., Windham Hall Gr. Sch., Newfane).
- 1822-1826, 1823, p. 10. (Jamaica).
- 1822-1826, 1823, pp. 75-76. (Concord Academy).
- 1822-1826, 1824, pp. 80-81. (Essex Co. Gr. Sch., Guildhall).
- 1822-1826, 1825, p. 107. (Orleans Co. Gr. Sch.).
- 1822-1826, 1825, pp. 114-115. (Essex Co. Gr. Sch., Concord).
- 1822-1826, 1826, p. 101. (Concord Academy).
- 1827-1831, 1828, pp. 38-39. (Rutland Co. Gr. Sch., Castleton, Vermont Classical High Sch.).
- 1827-1831, 1829, pp. 68-69. (Craftsbury Academy).
- 1827-1831, 1829, pp. 69-70. (Burlington High Sch.).
- 1827-1831, 1830, p. 52. (Bradford Orange Co. Gr. Sch.).
- 1827-1831, 1830, pp. 52-53. (Rutland Co. Gr. Sch., Castleton, Vermont Classical High Sch.).
- 1827-1831, 1831, pp. 103-104. (Caledonia Co. Gr. Sch., Lyndon).
- 1828-1834, 1832, pp. 104-105. (Lamoille Academy).
- 1828-1834, 1833, pp. 87-88. (Orange Co. Independent Gr. Sch., Chelsea).
- 1828-1834, 1833, p. 87. (Orange Co. Gr. Sch.).
- 1835-1837, 1835, p. 139. (Rutland Co. Gr. Sch., Castleton).
- 1835-1837, 1836, pp. 136-138. (Lamoille Co. Gr. Sch., Johnson).
- 1835-1837, 1836, pp. 139-140. (Chittenden Co. Gr. Sch., Richmond).
- 1835-1837, 1836, p. 147. (Lowell).
- 1835-1837, 1836, pp. 147-148. (Caledonia Co. Gr. Sch., Lyndon, Peacham).
- 1835-1837, 1836, p. 149. (Orleans Co. Gr. Sch., Brownington, Craftsbury).
- 1835-1837, 1836, p. 150. (Essex Co. Gr. Sch., Guildhall).
- 1838-1840, 1838, App., pp. 107-110.
- Jr. of the Senate, 1841, App., p. 36.
- Jr. of the House, 1841, App., pp. 65-72.
- 1841-1844, 1842, p. 110. (Caledonia Co. Gr. Sch., Peacham).
- 1845-1848, 1846, p. 53. (Corinth Academical Institute and Co. Gr. Sch., Orange Co.).
- 1845-1848, 1846, pp. 53-54. (Northfield Academy).
- 1845-1848, 1847, p. 117. (Corinth Academical Institute and Co. Gr. Sch., Orange Co.).
- 1845-1848, 1847, pp. 117-118. (Peoples' Academy, Morristown).
- 1845-1848, 1847, p. 118. (West Randolph Academy).
- 1845-1848, 1848, pp. 16-17. (Orleans Co. Gr. Sch., Brownington, Derby Academy, Craftsbury Academy).
- 1845-1848, 1848, p. 18. (People's Academy, Morristown).
- 1849-1851, 1849, p. 116. (Barre Academy).
- 1852-1854, 1852, pp. 61-62. (Orange Co. Gr. Sch., Randolph Centre, Thetford Academy, Bradford Academy, Corinth Academy, West Randolph Academy, Chelsea Academy).
- 1852-1854, 1852, pp. 126-127. (Londonderry Academy).
- 1852-1854, 1852, pp. 129-130. (Orleans Liberal Institute).
- 1852-1854, 1852, pp. 132-133. (Chelsea Academy).
- 1852-1854, 1852, pp. 133-134. (Essex Co. Gr. Sch., Guildhall).
- 1852-1854, 1853, pp. 78-79. (Barre Academy).

- 1852-1854, 1853, pp. 79-80. (Island Pond Academy, Essex Co.).
1852-1854, 1854, pp. 75-76. (Barton Academy).
1852-1854, 1854, pp. 78-79. (Northfield Academy, Northfield Institution).
1855-1856, 1855, pp. 70-71. (Orleans Co. Gr. Sch., Brownington, Orleans Liberal Institute, Glover, Craftsbury Academy, Barton Academy, Derby Academy).
1855-1856, 1855, pp. 71-73. (Orleans Co. Gr. Sch., Brownington, Orleans Liberal Institute, Glover, Derby Academy, Craftsbury Academy).
1855-1856, 1855, pp. 73-74. (Orange Co. Gr. Sch., Randolph Centre, Thetford Academy, Bradford Academy, Corinth Academy, West Randolph Academy, Chelsea Academy, Newbury Seminary).
1855-1856, 1855, pp. 172-173. (Missisquoi Valley Academy).
1857-1858, 1857, pp. 52-53. (Orleans Co. Gr. Sch., Brownington, Craftsbury Academy, Derby Academy, Glover Academy, Barton Academy, Westfield Gr. Sch., Albany Academy, Missisquoi Academy).
1857-1858, 1857, pp. 130-131. (Westfield Gr. Sch., Orleans Co.).
1857-1858, 1857, pp. 131-132. (Albany Academy).
1857-1858, 1858, p. 173. (Barre Academy).
1859-1860, 1859, pp. 50-51. (Orleans Co. Gr. Sch.).
1861-1863, 1861, pp. 41-42. (Belvidere).
1861-1863, 1863, pp. 112-113. (Green Mountain Central Institute).
1866, pp. 3-5. (Orange Co. Gr. Sch., Randolph Centre, State Normal Sch.).
1866, pp. 93-96. (Addison Co. Gr. Sch., School District no. 4, Middlebury).
1867, pp. 24-25. (Normal Schools, Randolph, Johnson, Castleton).
1867, p. 58.
1867, p. 101. (Orleans Co. Gr. School).
1867, p. 302. (Rutland Co. Gr. Sch., Castleton, Normal School).
1868, pp. 262-263. (People's Academy, Morristown).
1869, pp. 10-11. (Normal Schools, Randolph, Johnson, Castleton).
1869, pp. 13-14.
1869, pp. 72-73. (Island Pond Academy).
1870, pp. 21-22. (Concord Gr. Sch.).
1870, pp. 56-58. (Normal Schools, Randolph, Johnson, Castleton).
1870, pp. 165-166. (Goddard Seminary, Green Mountain Central Institute).
1870, pp. 519-522. (Orleans Co. Gr. Sch.).
1872, p. 60. (Normal Schools, Randolph, Johnson, Castleton).
1872, pp. 141-145. (Caledonia Co. Gr. Sch., Lyndon Academy and Graded Sch.).
1872, pp. 157-163. (Northfield Graded and High Sch.).
1874, pp. 58-62.
1874, pp. 62-65. (Normal Schools).
1874, pp. 152-157. (Newport Academy and Graded Sch. District).
1874, pp. 158-159. (Rutland Co. Gr. Sch., Castleton).
1876, pp. 88-89.
1876, pp. 117-120. (Normal Schools).
1876, p. 243. (Corinth Academy and Cookeville Graded Sch. District).
1876, pp. 244-245. (Corinth Academy and Co. Gr. Sch.).
1876, p. 254. (Normal Sch., Randolph).
1876, pp. 256-257. (West Randolph Academy, School District No. 15 in Randolph).
1878, pp. 106-107. (Normal Schools).
1878, p. 138.

- 1880, p. 156. (Brighton).
1882, pp. 39-40. (Normal Schools).
1882, p. 40. (Barre).
1882, p. 41. (Northfield).
1882, p. 213. (Normal Schools, Randolph).
1884, pp. 135-136.
1884, pp. 267-268. (Richford, Montgomery, Fletcher, School District No. 2 in Richford).
1886, p. 81. (Normal Schools).
1886, pp. 128-131. (Barton Academy and Graded School District).
1886, p. 213. (Greensboro, Craftsbury Academy).
1886, p. 214. (Irasburgh).
1888, p. 52. (Normal Schools, Randolph, Johnson, Castleton).
1888, p. 312. (Calais).
1888, p. 318. (Barre Academy, School District No. 8).
1892, pp. 24-32.
1892, p. 35. (Normal Schools).
1892, pp. 250-252. (Barre Academy, District No. 8, Spaulding Graded Sch.).
1892, pp. 252-255. (Bradford Academy and Graded Sch. District).
1892, pp. 264-265. (St. Albans Academy and Graded Sch., Franklin Co. Gr. Sch.).
1892, p. 421. (Barre, Spaulding Graded School, Goddard Seminary).
1894, pp. 25-26.
1894, pp. 28-29. (Normal Schools).
1894, pp. 144-176. (City of Barre, Spaulding Graded Sch. District).
1894, pp. 177-200. (City of Montpelier, Washington Co. Gr. Sch., Montpelier Union District).
1894, pp. 269-271. (People's Academy and Morrisville Graded Sch. District).
1894, p. 274. (Spaulding Graded Sch., Barre).
1896, pp. 17-18. (Normal Schools).
1896, pp. 179-210. (St. Albans Academy and Graded Sch., City of St. Albans).
1896, p. 448. (St. Albans Academy and Graded Sch.).
1898, p. 17. (Normal Schools, Randolph, Johnson, Castleton).
1900, pp. 14-15, 17-19. (Normal Schools and High Schools).
1900, p. 185. (St. Albans Academy).
1900, p. 254. (Chelsea Academy).
1900, pp. 254-255. (Concord Academy and Gr. Sch.).
1902, p. 35. (Normal Schools).
1902, pp. 38-40. (High Schools and Academies).
1902, pp. 383-384. (St. Albans).
1904, p. 58. (Normal Schools).
1904, pp. 61-63. (High Schools and Academies).
1906, pp. 261-264. (Spaulding Graded Sch. District, Barre City).
1906, pp. 590-591. (Craftsbury Academy, Orleans Co.).
1906, pp. 591-592. (Essex Co. Gr. Sch., Guildhall).
1906, pp. 592-593. (Barton Landing Academy and Graded Sch. District).
1906, p. 770. (Normal Schools).
1908, pp. 31-32. (Castleton, Randolph, Johnson, Normal Schools).
1908, pp. 22-23.
1908, pp. 45-46.
1908, p. 501. (Thetford Academy).

- 1910, p. 24.
 1910, pp. 64-66. (Johnson Normal School, Lamoille Co. Gr. Sch., Castleton Normal School).
 1910, pp. 67-70. (State Agricultural School, Randolph).
 1910, pp. 361-362. (Orange Co. Gr. Sch., State Normal School, Randolph, State School of Agriculture).
 1912, p. 4.
 1912, p. 487. (Orleans Co. Gr. Sch., Brownington).
 1915, pp. 96-97.
 1921, pp. 284-285. (Washington Co. Gr. Sch., Montpelier Union District).
 1921, pp. 304-306. (St. Albans Academy and Graded Sch., City of St. Albans).
 1923, p. 148. (Essex Co. Gr. Sch.).
 1927, p. 138. (Spaulding Graded Sch. District, City of Barre).
 1927, pp. 150-152. (Spaulding Graded Sch. District, City of Barre).
 1931, pp. 198-199. (Essex Co. Gr. Sch., Guildhall).
 1931, pp. 199-200. (Orange Co. Gr. Sch., Randolph, State Agricultural Sch.).
 1931, pp. 235-236. (Montpelier City Schools).
 1935, pp. 78-79.
 1935, p. 243. (Orange Co.).
 1937, p. 89.
 1937, p. 105.
 1937, pp. 108-109.
 1937, p. 110.
 1939, pp. 108-109.

Section 19. Grammar Schools

- b. Acts Probably Not Involving Lease Lands
 1797R, 1780, October, App. p. 145. (Clio Hall).
 1805-1807, 1807, pp. 41-43. (Dorset Academy).
 1814, pp. 18-19. (Chester Academy).
 1819-1821, 1821, pp. 69-70. (Hartland Academy).
 1819-1821, 1821, pp. 202-203. (Brattleboro Academy).
 1822-1826, 1822, pp. 67-68. (Vergennes Academy).
 1822-1826, 1823, pp. 69-70. (Windsor Female Academy).
 1822-1826, 1824, pp. 64-65. (St. Johnsbury Female Academy).
 1822-1826, 1824, pp. 79-80. (Hinesburgh Academy).
 1822-1826, 1826, p. 90. (Columbian Academy, Windsor).
 1822-1826, 1826, pp. 90-91. (Townshend Academy).
 1827-1831, 1828, p. 39. (Jericho Academy, Jericho).
 1827-1831, 1828, pp. 40-41. (Female School Association of Middlebury).
 1827-1831, 1829, pp. 66-68. (Burr Seminary, Manchester).
 1827-1831, 1830, p. 46. (Newbury High School).
 1827-1831, 1831, pp. 108-109. (Brattleboro East Village High School).
 1828-1834, 1832, pp. 105-106. (Vermont Scientific and Literary Institution, Brandon).
 1828-1834, 1832, p. 107. (Brattleboro High School Association).
 1828-1834, 1833, pp. 89-90. (Newbury Seminary).
 1828-1834, 1834, pp. 73-74. (Leland Classical and English School at Townshend).
 1828-1834, 1834, pp. 74-76. (Troy Conference Academy, Poultney).
 1828-1834, 1834, pp. 77-79. (Black River Academy, Ludlow).

- 1828-1834, 1834, p. 96. (Union Academy, East Village of Bennington).
1835-1837, 1835, pp. 125-126. (Brookfield Female Seminary).
1835-1837, 1835, p. 138. (Hinesburgh Academy).
1835-1837, 1836, pp. 140-141. (Burlington Female Seminary).
1838-1840, 1838, pp. 72-74. (Montpelier Female Seminary).
1838-1840, 1838, pp. 74-75. (Georgia Academy).
1838-1840, 1839, pp. 69-70. (Enosburgh Academy).
1838-1840, 1839, pp. 71-72. (Hartford Academy).
1838-1840, 1840, p. 42. (Phillips Academy).
1841-1844, 1844, pp. 44-45. (Bakersfield Academical Institution).
1845-1848, 1846, pp. 54-55. (Manchester Female Seminary).
1849-1851, 1849, pp. 114-115. (Female Collegiate Institute, Newbury).
1849-1851, 1849, p. 117. (Franklin Academical Institution).
1849-1851, 1849, pp. 117-118. (North Bennington Academy).
1849-1851, 1849, pp. 118-119. (Bell Institute, Underhill).
1849-1851, 1850, pp. 144-145. (Rutland Academy in East Rutland Village).
1849-1851, 1850, pp. 145-146. (Stowe Academy).
1849-1851, 1850, pp. 147-148. (Montpelier Female Seminary, Montpelier Village).
1849-1851, 1851, pp. 109-110. (Fairfax Academy).
1849-1851, 1851, pp. 110-111. (Wilmington Academy).
1849-1851, 1851, pp. 111-112. (Swanton Falls Academy).
1849-1851, 1851, pp. 112-113. (Woodstock Academy).
1849-1851, 1851, pp. 113-114. (Rockingham Academy).
1852-1854, 1852, pp. 127-128. (Underhill Academy).
1852-1854, 1852, pp. 130-131. (Richmond Academy).
1852-1854, 1852, pp. 131-132. (Bristol High School).
1852-1854, 1853, pp. 77-78. (Chittenden Co. Institute).
1852-1854, 1853, pp. 80-81. (Brattleboro Academy).
1852-1854, 1853, pp. 81-82. (McIndoes Falls Academy).
1852-1854, 1853, pp. 82-83. (West River Academy).
1852-1854, 1853, pp. 83-85. (Springfield Wesleyan Seminary).
1852-1854, 1853, pp. 85-86. (Hammond Female Institute).
1852-1854, 1853, pp. 87-88. (Burton Female Seminary).
1852-1854, 1853, pp. 88-90. (Northern Educational Union).
1852-1854, 1854, pp. 76-78. (Vermont Episcopal Institute).
1852-1854, 1854, pp. 79-80. (Sutton Academy).
1852-1854, 1854, pp. 80-82. (Union Institute).
1855-1856, 1855, pp. 173-175. (Green Mountain Academy).
1855-1856, 1855, pp. 175-176. (Vergennes Academy).
1855-1856, 1856, pp. 186-187. (Poultney Academy of Music).
1857-1858, 1857, pp. 128-129. (Waterford Institute).
1857-1858, 1857, Extra Session, p. 177. (Hammond Female Institute).
1857-1858, 1858, pp. 174-175. (Coventry Academy).
1857-1858, 1858, pp. 176-177. (St. Johnsbury Academy of Music).
1859-1860, 1859, p. 138. (Rutland Academy).
1859-1860, 1859, p. 139. (Coventry Academy).
1859-1860, 1860, pp. 92-93. (Ballard Academy, Poultney).
1859-1860, 1860, pp. 93-95. (South Hardwick Academy).
1859-1860, 1860, pp. 95-96. (Charleston Academy).
1859-1860, 1860, pp. 97-98. (Newport Academy).

- 1859-1860, 1860, pp. 98-99. (Burr and Burton Seminary).
 1859-1860, 1860, p. 99. (Green Mountain Institute, Green Mountain Liberal Institute).
 1859-1860, 1860, p. 100. (Troy Conf. Academy).
 1861-1863, 1861, pp. 148-149. (Glenwood Ladies' Seminary).
 1861-1863, 1861, p. 149. (Northern Educational Union).
 1861-1863, 1862, pp. 116-118. (Green Mountain Seminary).
 1861-1863, 1862, pp. 118-120. (Holland Academy).
 1861-1863, 1862, p. 120. (Leland and Gray Seminary, Leland Sem.).
 1861-1863, 1863, pp. 110-111. (Essex Academy).
 1864, pp. 137-138. (Normal Institute of Poultney).
 1865, pp. 105-106. (Vermont Conference Seminary and Female College).
 1866, pp. 96-97. (Morgan Academy).
 1866, pp. 98-100. (Rochester Academy).
 1866, p. 101. (Troy Conf. Academy, Ripley Female College).
 1866, pp. 104-105. (Woodstock Academy of Natural Sciences).
 1867, pp. 93-95. (Black River Academy).
 1867, p. 96. (South Hardwick Academy, Hardwick Academy).
 1867, pp. 96-98. (Lyndon Literary and Biblical Institution).
 1867, pp. 99-100. (Norwich Classical and English Boarding School).
 1868, p. 263. (Green Mountain Institute).
 1868, p. 264. (Green Mountain Seminary).
 1868, p. 265. (Northern Educational Union).
 1869, pp. 67-69. (Beeman Academy, New Haven).
 1869, pp. 69-72. (Chester Academy, Sch. District No. 20).
 1869, pp. 74-77. (Phillips Academy, Danville Sch. District No. 26).
 1869, p. 78. (Springfield Wesleyan Seminary).
 1870, p. 166. (Green Mountain Perkins Academy, Green Mountain Institute).
 1870, pp. 171-172. (Vermont Conf. Seminary and Female College).
 1872, pp. 139-141. (Vermont Academy).
 1872, pp. 146-148. (Douglas Graded Sch. District, Chelsea).
 1872, p. 152. (Green Mountain Seminary).
 1872, p. 163. (West Rupert Educational Institute).
 1874, p. 137. (Graded Sch. District, Bennington).
 1874, p. 138. (Douglas Academy and Graded Sch. District).
 1874, pp. 139-140. (Chester Academy).
 1874, pp. 144-146. (Essex Classical Institute).
 1874, p. 158. (Ripley Female College).
 1874, pp. 160-161. (Vermont Conf. Seminary and Female College).
 1874, pp. 162-165. (West Concord Graded Sch. District, Concord).
 1874, pp. 173-176. (St. Johnsbury Academy).
 1876, pp. 241-242. (Chester Academy).
 1876, pp. 245-247. (Glenwood Classical Seminary, West Brattleboro Village).
 1876, pp. 248-250. (Black River Academy and District No. 1, Ludlow).
 1876, pp. 251-253. (Newbury Seminary and Ladies' Institute).
 1876, p. 255. (Springfield Graded Sch. District).
 1878, pp. 144-145. (Bellows Free Academy of Fairfax).
 1878, pp. 146-147. (Bellows Free Academy of St. Albans).
 1878, pp. 147-148. (St. Johnsbury Academy).
 1878, pp. 150-151. (Guilford Seminary).
 1878, pp. 151-152. (Leland Classical and English School, Townshend).

- 1880, p. 144. (Chester Academy).
1884, pp. 145-146. (Lyndon Literary and Biblical Inst.).
1888, p. 181. (Troy Conf. Academy).
1888, pp. 207-208. (Vermont Conf. Seminary and Female College).
1890, pp. 213-214. (Rutland English and Classical Inst.).
1892, pp. 257-258. (South Hardwick Academy).
1892, pp. 259-260. (Black River Academy).
1892, pp. 266-267. (Underhill Graded Sch. District, Bell Institute).
1894, pp. 263-265. (Montpelier Seminary).
1896, pp. 451-452. (Vermont Academy, Saxton's River Village).
1898, p. 359. (Green Mountain Academy).
1902, pp. 402-403. (Manchester Academy).
1904, p. 414. (Troy Conf. Academy).
1906, pp. 593-594. (Grafton Academy).
1908, p. 499. (Green Mountain Perkins Academy).
1908, pp. 501-502. (Troy Conf. Academy).
1908, p. 502. (Troy Conf. Academy).
1917, p. 317. (Newport Academy and Graded Sch. District).
1933, pp. 267-268, 271-272. (St. Albans Bellows Free Academy).

Section 20. School Lots

- 1787R, 1782, October, p. 179.
1794-1796, 1795, p. 4.
1797R, pp. 493-499.
1800, pp. 89-90.
1801, pp. 88-89, 92-93.
1802-1804, 1802, pp. 79-80, 89-90.
1802-1804, 1803, pp. 40-41, 45-46.
1802-1804, 1804, January, pp. 54-55.
1804, October, pp. 27-28, 49-50.
1805-1807, 1805, pp. 19-20.
1805-1807, 1805, pp. 127-129.
1805-1807, 1806, pp. 104-105.
1808-1810, 1808, pp. 23-24, 54-55.
1808-1810, 1809, pp. 96-97.
1808-1810, 1810, pp. 96-98, 153-155.
1811-1814, 1811, pp. 48-50, 82, 91-93.
1811-1814, 1812, pp. 35-36, 158-159.
1811-1814, 1814, pp. 111-112.
1815-1818, 1815, p. 49.
1815-1818, 1816, pp. 48-49, 128.
1819-1821, 1821, pp. 90-91.
1822-1826, 1822, pp. 76-77.
1822-1826, 1823, p. 10.
1822-1826, 1824, pp. 10-11.
1822-1826, 1825, pp. 26-27.
1822-1826, 1826, pp. 21-22.
1827-1831, 1827, pp. 19-28.
1827-1831, 1828, p. 13.
1833, pp. 13-15.
1835-1837, 1835, pp. 147-148.

- 1835-1837, 1836, pp. 38-39, 147.
- 1841-1844, 1844, p. 6.
- 1845-1848, 1845, p. 24.
- 1845-1848, 1846, pp. 10-11.
- 1845-1848, 1848, pp. 5, 9, 24.
- 1849-1851, 1851, pp. 141-142, 143.
- 1852-1854, 1852, pp. 63, 85-103, 193-194.
- 1855-1856, 1856, p. 7-10.
- 1861-1863, 1861, pp. 41-42.
- G. S. (1862), ch. 97, secs. 3-5.
- 1864, pp. 107-124.
- 1865, pp. 191-204.
- 1866, pp. 93-94, 101-103, 221-228.
- 1867, pp. 22-24.
- 1870, pp. 38-44.
- 1872, pp. 51-54, 54-55.
- 1874, pp. 152-157.
- 1876, pp. 88-89, 124-127, 129-130, 132-133, 134-137.
- 1878, pp. 103, 104.
- 1880, pp. 97-100.
- 1882, pp. 36, 41, 212-213.
- 1884, pp. 267-268.
- 1886, pp. 73, 88-91, 127-128.
- 1888, pp. 9-52, 52-53, 153, 312.
- 1890, pp. 19-23, 23-24.
- 1898, pp. 186-192, 388.
- 1900, pp. 22, 355.
- 1904, pp. 66-67.
- 1906, pp. 57-61, 65-66, 255-256, 524, 725.
- 1908, pp. 22-23, 45-46.
- 1910, p. 24.
- 1912, pp. 4, 629-630.
- 1915, pp. 96-97.
- 1923, pp. 53, 170.
- 1925, p. 48.
- 1927, pp. 161-162.
- 1929, p. 67.
- 1931, pp. 253-255.
- 1933, pp. 90, 245.
- 1935, pp. 78-79, 107, 114-115, 265-266.
- 1937, pp. 89, 105, 108-109.
- 1939, pp. 108-109.

Section 21. Gospel (Ministry) Lots

- 1783, October, Slade, *State Papers*, pp. 472-473.
- 1787, p. 2.
- 1794-1796, 1794, pp. 101-103.
- 1797R, pp. 474-479.
- 1798, pp. 17-19, 42-44.
- 1801, pp. 17-20.
- 1801, pp. 92-93.

1803, pp. 82-83.
 1805-1807, 1805, pp. 127-129.
 1805-1807, 1806, pp. 104-105.
 1808-1810, 1810, pp. 96-98.
 1811-1814, 1811, pp. 91-93.
 1811-1814, 1812, pp. 97-98.
 1811-1814, 1814, pp. 111-112.
 1815-1818, 1818, pp. 84-85.
 1819-1821, 1819, p. 26.
 1835-1837, 1835, pp. 147-148.
 1845-1848, 1845, p. 5.
 1852-1854, 1852, p. 63.
 1861-1863, 1861, pp. 41-42.
 G. S. (1862), ch. 97, secs. 3-5.
 1867, p. 57.
 1868, p. 32.
 1869, p. 39.
 1872, pp. 608-611.
 1874, pp. 57-58.
 1876, pp. 88-89.
 1878, pp. 100-102, 104.
 1880, pp. 116-117.
 1882, p. 137.
 1884, p. 95.
 1906, pp. 82-83, 598-600, 725.
 1908, pp. 22-23.
 1915, pp. 96-97.
 1917, p. 189.
 1935, pp. 265-266.
 1937, p. 89.

Section 22. The Glebe

1787, p. 7.
 1787R, p. 243.
 1794-1796, 1794, pp. 101-103.
 1799, pp. 11-12.
 1801, pp. 92-93.
 1805-1807, 1805, pp. 19-20, 127-129.
 1811-1814, 1811, pp. 48-50.
 1815-1818, 1816, pp. 96-97.
 1845-1848, 1847, pp. 10-12.
 1852-1854, 1852, p. 63.
 1867, p. 57.
 1876, pp. 88-89.
 1937, p. 89.

Section 23. First Settled Minister

1783, October, Slade, *State Papers*, pp. 472-473.
 Jr. of the Gen. Assem., Oct., 1784 and June, 1785, 1785, p. 13.
 1798, pp. 17-19.

- 1805-1807, 1805, pp. 19-20.
1805-1807, 1806, pp. 104-105.
1808-1810, 1810, pp. 96-98.
1811-1814, 1811, pp. 48-50, 91-93.
1811-1814, 1814, pp. 82-83, 111-112.
1815-1818, 1816, pp. 48-49.
1827-1831, 1830, pp. 62-63.
1835-1837, 1835, pp. 147-148.
1835-1837, 1836, p. 147.
1849-1851, 1851, pp. 141-142, 143.
1852-1854, 1852, pp. 63, 193-194.
1861-1863, 1861, pp. 41-42.
G. S., ch. 97, secs. 3-5.
1867, p. 57.
1868, p. 32.
1869, p. 39.
1874, pp. 57-58.
1878, p. 104.
1880, pp. 116-117.
1906, p. 725.
1908, pp. 22-23.
1915, pp. 96-97.
1937, p. 89.

APPENDIX C

CRITIQUE OF DISSENTING OPINION IN UNIVERSITY OF VERMONT V. WARD, 104 VT. 239 (1932)¹

The dissent written by Judge Moulton in *University of Vermont v. Ward* was an earnest effort to turn the tide of a doctrine which had enjoyed judicial support in Vermont for a century and a half. It is not one which is apt to attract the support of other jurists. Whether or not one is inclined to agree with his conclusion respecting the nature of durable leases, the construction of his argument is difficult to accept. Perhaps he was too earnest here; the opinion does not display the calm, careful use of legal material by which his other writings are characterized.

To begin with, his major tactic was to disregard the fact that Vermont had specifically developed its own doctrine, and to argue the case of perpetual leases in terms of the common law and the rulings from other states. For example, he looks to the New York "manorial leases" and Pennsylvania rent services for citations. And he says: "I believe and would hold that, regardless of whatever name may have been given to this conveyance, it is in its character and incidents a fee upon condition."²

So far, so good. It is fair enough for an eminent jurist to undertake to demonstrate that a local doctrine is sufficiently peculiar and far afield from generally accepted concepts to merit reassessment. Unfortunately, though, he became so intent on achieving this that he so relied on certain cases as to leave them open to misunderstanding by one not familiar with them. Furthermore, it seems a weak point that, whereas he was basically arguing against local usages, at certain points he relied on other localisms.

With respect to his use of citations, for example, he says: "Estates granted for this length of time [perpetuity] have been held [in Vermont] to be in fee"³ and cites *Arms v. Burt*,⁴ *Lampson v. New Haven*,⁵ *Stevens v. Dewing*,⁶ and *Propagation Society v. Sharon*.⁷ The first and third may be quickly dismissed as not being in point because they did not involve public land, and we have seen that the Vermont court has regularly made this distinction. The use of the *Lampson* case is difficult to understand. The court *actually* ruled that a lease perpetual in form, *but with a commuted rent* was such a conveyance. In fact, it was in this opinion that the court explicitly decreed a lease of the type Judge Moulton argues against. The use of the *Propagation* case is not much more fortunate. The court's words, in point, were:

1. This was the single dissent discovered respecting the Vermont doctrine of durable leases as applied to the public lands.

2. 104 Vt. 239, 267 (1932).

3. *Ibid.*, p. 267.

4. 1 Vt. 303 (1828).

5. 2 Vt. 14 (1829).

6. 2 Vt. 411 (1830).

7. 28 Vt. 603 (1856).

They are but leases in form . . . and no rent is reserved, for the non-payment of which, an ejectment could be maintained. The barley corn rent is but nominal, and it is only payable *if demanded*.⁸

Similarly, it would seem that his use of *Piper v. Meredith* was not too apt. He wrote: "It is said in *Piper v. Town of Meredith*, 83 N. H. 107, that it 'is well settled law that a perpetual lease upon condition conveys a fee.'"⁹ This, of course, is a correct quotation. But it stops short of where it should have been carried because the remainder is at distinct variance with Judge Moulton's own views. The full statement is this: "In reality the plaintiff's estate is not a leasehold at all, for it is well settled law that a perpetual lease upon condition conveys to the lessee a *determinable or base fee*"¹⁰ Whereas, we find Judge Moulton proceeding:

This is not a fee simple absolute. . . . Neither does it fall within the category of a qualified or base fee. It is, I think, a conditional fee, the incidents of which are quite different from those of the estate last mentioned. It is necessary to be precise about this, for the distinction is important.¹¹

He then makes a meticulous analysis of the distinction between determinable fees and fees upon condition, and this is with a definite purpose because he makes a point of it with respect to the circumstance in the case that the University had made no re-entry, as required in a fee upon condition.

The use of certain other citations is equally subject to question. But enough has been demonstrated.

As to the other major criticism of the opinion a single illustration should suffice. Throughout his argument, he insists on the technicalities of real property law, as inherited from England. For example, he says: "This case should be decided, I believe, not by taking refuge behind a name [lease], but by an analysis of the true nature of the conveyance."¹² But, he produces this statement:

It is true that there are no words of inheritance in the *habendum* of this conveyance. But this does not preclude the grant of an estate in fee. The doctrine of the common law that the absence of the word 'heirs' caused the estate, though expressed to be perpetual in duration, to be one for life only has been from the earliest times in this State considered to be a rule of construction only and not one of positive law The intention of the parties, as gathered from the instrument taken as a whole, is to govern.¹³

It is small wonder that he failed to convince the majority of the court from which he dissented. And it is too bad that the position taken was marred by such maneuvers. He makes a concluding remark which merits quotation because of its thorough soundness and its significance with respect to the situation in which the state finds itself with the present system of lease lands:

I do not share in the forebodings of my brethren that a failure to construe such a conveyance as a lease 'would unsettle and destroy many titles hitherto believed to be good.' The purpose in giving 'perpetual leases' of public

8. *Ibid.*, p. 616.

9. 104 Vt. 239, 268 (1932).

10. 83 N. H. 107, 110 (1927). Italics mine.

11. 104 Vt. 239, 270 (1932).

12. *Ibid.*, p. 275.

13. *Ibid.*, p. 269.

lands was, as the majority opinion points out, to encourage the clearing of forest land and its use for agriculture. Settlers would not accept such conveyances unless they were assured that they and their children would enjoy the fruits of their labors. 'This result' say my associates, 'and a reasonable and adequate rent for the lands could be secured only by long term leases.' The purpose is as well fulfilled if the conveyances in perpetuity are construed to pass a conditional fee as if they are construed to pass a leasehold. In neither case can the rent be increased during the term. In neither case can the grantor repossess itself of the premises except as provided therein. There is, it seems to me, far more danger that the titles of the grantees will be disturbed by holding that the conveyances are leases, than that the titles of the grantors will be affected by saying that they pass a conditional fee, even though the grantors may have believed, when they executed the instruments, that they meant something different than their language stated.¹⁴

It would have been well for Vermont if Judge Moulton had built an argument to support his views which had been acceptable. This he could have done by expanding his occasional references, such as that just above, to the historical situation and the present anomalous nature of the system. It would have resulted in opening a path by which to tax the lease lands, because if they were held to have been conveyed in fee, they would probably not qualify any longer as public lands.

14. *Ibid.*, pp. 278-279.

APPENDIX D

EXHIBIT OF CIRCUMSTANCES IN BETHEL ILLUSTRATIVE OF CONDITIONS CONFRONTING ADMINISTRATORS OF LEASE LANDS¹

"Bethel was the first township chartered by the Legislature of Vermont and the records in the Town Clerk's office of Bethel show that the original survey of the township was along somewhat peculiar lines and that the allotments of the college right, and, as I assume, of all rights, was somewhat more complicated than in townships where there were, for instance, three divisions with one right in each division to the college and each of the original proprietors.

"The lots drawn to the college right are described in the 1922 quadrennial appraisal, and so far I have been able to find no better description, and I will say here that in my searching the records in different towns, I have found no town where the records seem to be more carefully and correctly kept than in the Town Clerk's office of Bethel, and no Town Clerk as fully conversant with all town affairs as Guy Wilson of Bethel, who assisted me materially in my search in this town.

The lots are as follows:

- Lot 7 in the 1st range, east of the branch, 100 acres (1st div.)
- Lot 12, 1st short range, west of branch, 100 acres (2nd div.)
- Lot 35, east of Rochester line, 100 acres (3rd div.)
- Lot 37, 1st range, east of Rochester line, 100 acres (4th div.)
- Lot 3, after-division, 33- $\frac{1}{3}$ acres (after-div.)

"The above named lots appear listed on Rent Roll, pages 391 to 396, both inclusive.

"The Rent Roll, page 397, shows that the University at one time, and for all that I have been able so far to learn, should have now lot 22, 2nd range, east of Rochester line, 100 acres, known as the 'Elias Lyman' lot. Guy Wilson, Town Clerk, told me that there is no such lot in Bethel.

"The 1922 quadrennial appraisal shows in addition to lands listed above as University land in Bethel, lot 1 in the northeast corner of town, containing 20 acres. There is no record of this on the Rent Roll, nor do I learn from the search I was able to make how this lot came to be listed as a University lot. It must be either one of the chartered rights or it must have been deeded to the University by someone at some time, or else it is error to include it among the University lands. In any event, it appears on the 1922 quadrennial appraisal among the sequestered lands with rent due the University of Vermont, as will appear in the following pages."

1. The exhibit is verbatim quotation of Mr. MacFarland's report, found in "Lease Lands," I, 174-194.

From "Addenda, May, 1925":

"No mention is made in the foregoing of a small lot of $9\frac{1}{2}$ acres called on Rent Roll, page 394, the 'College Intervale' lot. This lot was leased to Daniel Kinney, June 7, 1808 at an annual rental of \$3.34 and rent has apparently been paid since. W. H. Wright, East Bethel, is the present occupant. W. H. Wright is also occupant of a certain lot 1, containing 20 acres in the northeast corner of the town, as shown by the Quadrennial Appraisal.

"Whether there is any connection between the two lots or not, I do not know, but think there is. The $9\frac{1}{2}$ acre lot appears on Rent Roll but not in Quadrennial Appraisal. The 20 acre lot does not appear on Rent Roll though there is a lease of this lot to Daniel Kinney in the possession of the University dated June 7, 1808, but is found in the Quad. Appraisal. This lease describes the land as being 'the Intervale lot that was surveyed and laid to the original right or share of land in said Bethel granted by charter for the use and benefit of a College,' but does not name the number of acres. The number of acres, 20, appears only on the filing of the lease and may not be correct. I am inclined to think, however, that it is, for the rent of \$3.34 would be nearer the usual rent on 20 acres than on $9\frac{1}{2}$ acres. Further than this, the Quad. Appraisal lists a 20 acre lease lot and does not list a $9\frac{1}{2}$ acre lot, and both leases, if there were two, which I doubt, were made to Daniel Kinney the same day, June 7, 1808, both cover the 'College Intervale' lot, as shown by Rent Roll, and the lease above referred to in possession of the University, and both occupancies are the same, W. H. Wright.

"So, in brief, I think there is but one 'College Intervale' lot in Bethel, that it contains 20 acres, that the occupant is W. H. Wright with a rental of \$3.34, and that record on Rent Roll page 394 should be made to read 20 acres instead of $9\frac{1}{2}$ acres."

APPENDIX E

“JOINT RESOLUTION RELATING TO THE CHANGING THE NAME OF THE TOWNSHIP OF FULLUM TO THE TOWN OF DUMMERSTON AND LEGALIZING CERTAIN ACTS AND PROCEEDINGS OF SAID TOWN OF DUMMERSTON.

“*Whereas*, it appears that the charter of the township of Fullum, in the county of Windham, was heretofore granted by Benning Wentworth, Governor of the Province of New Hampshire, during the reign of George III, which charter was dated on the twenty-sixth day of December, 1753, and was recorded in volume 19 A, pages 41 to 45, both inclusive, of the charters of the Province of New Hampshire, and was renewed on the twelfth day of June, 1760, on the sixth day of July, 1761, on the seventh day of July, 1762, and on the seventh day of June, 1764, under which said township had acted until the fourth day of March, 1771, at which time said township was organized as the town of Dummerston and has since purported to act as such town, and that no objection of any kind has been raised as to the acts and proceedings of the town of Dummerston since its organization; and

“*Whereas*, it does not appear by any act of the General Assembly of Vermont that the name designated in said charter has been changed to Dummerston; *therefore be it*

“*Resolved by the Senate and House of Representatives:*

“That the name of the Township of Fullum is hereby changed to the town of Dummerston, and that all former acts and proceedings of said town since its organization, so far as its name is concerned, are hereby ratified and declared legal and valid, as if the same were done and performed under the name of the township of Fullum.”¹

1. *Laws of Vermont*, 1937, pp. 406-407.

APPENDIX F

The following quoted material is extracted from the 1944 town *Report* of Thetford.¹ It comprises a nice summary statement about lease lands. It demonstrates the condition of obscurity which prevails respecting the lease lands in that: 1) such a report should have been needed; 2) even in such a report, a serious error is to be found—the 1937 act is completely unnoticed.

A letter to the Thetford People.

I have been asked by the Board of Auditors to clear up the 'mystery' of the lease lands in Thetford. There was no mystery about them a century ago, but their existence has been continuous since the founding of the town, and they have been taken for granted by each succeeding set of town officers until their origin has been forgotten. They come down to us from the original charter, vestiges of the days of King George the Third and of his agent, Benning Wentworth, Governor of the Province of New Hampshire.

In 1761, fifteen years before the Declaration of Independence, sixty two grantees, or proprietors, received the charter of Thetford from the Governor in the name of the King. Besides the shares of these proprietors there were to be set aside four special ones; namely, for 'the benefit of a school in said town,' for 'the first settled minister of the Gospel,' for 'a Glebe for the Church of England as by Law Established,' and for the 'Incorporated Society for the Propagation of the Gospel in foreign Parts.'

The first one, for a school, explains itself and is still held by the town for its original purpose. The second became private property when the first minister received it. The remaining two are explained by the fact that the charter was issued by the English Crown and that the Governor was a devoted adherent of the English Church. Glebe is an English term referring to land set aside in a parish for the support of the Church. The Society (with the long name), often referred to as the S. P. G., was founded in London in 1701 for promoting Church of England missionary work in the colonies.

These two Church shares of about three hundred and fifty acres each, became subjects of much controversy after the Revolution. The New Englanders, being mostly of Puritan descent, did not care much for the Church of England and various efforts were made to divert the shares for other uses. Early in the history of Vermont the state decided that the towns should use them for the support of education. However, a long struggle was carried on to regain them for the English Church, and several lawsuits took place, two of which reached the United States Supreme Court, with Daniel Webster as one of the attorneys.

The final decision was that the Glebe lands should be retained by the towns as Vermont had decreed, and used for the support of schools, but that the 'Propagation' lands should be restored to the London Society. That Society had given a power of Attorney to the Eastern Diocese in America in order to carry on these suits, and the income, so far as it could be collected, was used in Vermont. The Vermont Diocese was organized in

1. Pp. 3-5.

1832, but it was only as recently as 1927 that it was able to persuade the London Society to convey the lands to them. In that year a quit-claim deed was lodged with the clerk of each town in which the land lies, and the Vermont Diocese has, with difficulty, identified most of the lots and taken possession.

None of these sequestered lands may be sold, nor can they be taxed but must be leased and a rent charged. Early leases in Thetford were not uniform, some being for nine hundred and ninety-nine years, and others for a much shorter term, according to conditions at the time. The leases are bought and sold and, from the first, the rent has been a fixed sum, but it is not always clear how this amount was decided. In some leases it was stated that the buyer paid a price for the lease which represented the value of the land, and the rent was six per cent of this value.

The effect of these leases has always been practically the same as that of private ownership; and the occupant at present, has an advantage from the fact that the rent is less than a tax would be, and does not fluctuate. Apparently the rent is for the use of the soil without regard to wood growing in it or of improvements made upon it and many questions arise in one's mind about this situation. Because of the method of the original division of lands, the lots are scattered throughout the town. The peculiar conditions arising from the Church lands are unique in that they exist only in towns chartered before the Revolution.

There is another parcel of land in town which is subject to lease and rent, the 360 acre lot called College Land. This was early given to Dartmouth by Thetford individuals who wished to help the then struggling institution, and the rent is still paid to its treasurer. This lot and the Propagation lots yield no income to the town.

From many causes, among them early inadequate surveying, the uncertainty of revolutionary times and later carelessness in recording, the chartered lease lands are in some confusion in Thetford as in other towns. The Glebe lots are not now easily identified except by tradition, but, being used for the same purpose, they have become merged with the school land.

I have given a necessarily brief and incomplete outline of the history of these lands. There are many aspects of them that should be more fully studied and recorded. It is a problem for our newly organized Historical Society and I suggest that a widespread discussion take place and the society be a clearing house for the results.

Mary B. Slade,
Chairman of the Advisory Com-
mittee of the Historical Society.

Hemenway has this to say respecting the first settled minister's lot:

Soon after his [Mr. Sumner's] settlement the trouble commenced between Great Britain and the Colonies, . . . Mr. Sumner proved to be the only Tory in Thetford, and soon destroyed his usefulness as a teacher of Christ with the people, who would not hear him preach, and threatened to tar, feather and mob him.

Mr. Sumner absconded to Swanzey, N. H. . . . He exchanged farms with Capt. William Heaton of Swanzey who soon moved on to the lot given Mr. Sumner where the depot at East Thetford now is. Capt. Heaton soon opened a tavern there and for a number of years it was the principal place for town and other meetings.²

2. II, 1093-1094.

APPENDIX G

REPORT TO THE LEGISLATURE OF 1878 ON ACREAGE AND RENTALS OF
LEASE LANDS

List of Lands Sequestered in the County of Addison for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.																		
TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont,			For Middlebury College.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Addison,	686	10089	193 20	265	4065	65 53	421	6024	127 67	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bridport,	1071	15525	213 27	351	4210	74 00	720	11315	139 27	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bristol,	1156	8546	143 87	100	900	15 00	985	7085	118 15	.....	.....	.....	.....	.....	.....	71	561	10 72
Cornwall,	125	2150	9 54	.....	.....	.....	125	2150	9 54	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ferrisburgh,	1540	19550	249 33	400	5600	56 00	1140	13950	193 33	.....	.....	.....	.....	.....	.....	.....	.....	.....
Goshen,	1400	3700	498 30	100	1000	21 30	500	1400	35 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Granville,	1390	4600	89 00	510	1600	31 00	180	1600	10 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hancock,	2490	1856	*128 00	260	247	24 00	180	117	7 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Leicester,	300	1202	69 00	.....	.....	.....	300	1202	69 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lincoln,	1400	11700	114 00	300	5500	28 00	300	3300	18 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Middlebury,	800	6200	170 00	300	1700	48 00	500	4500	122 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Monkton,	992	13792	148 52	228	3555	22 45	764	10237	126 07	.....	.....	.....	.....	.....	.....	.....	.....	.....
New Haven,	555	7753	116 85	162	2228	34 19	393	5525	82 66	.....	.....	.....	.....	.....	.....	.....	.....	.....
Orwell,	1814	17192	323 27	387	3584	60 25	1427	13608	263 02	.....	.....	.....	.....	.....	.....	.....	.....	.....
Panton,	445	4781	76 90	100	1266	22 60	244	3499	53 70	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ripton,	2860	4450	257 00	360	325	29 00	800	1100	70 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Salisbury,	205	850	38 00	5	150	9 00	100	500	20 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Shoreham,	1230	22400	284 07	366	6405	84 84	864	15935	199 23	.....	.....	.....	.....	.....	.....	.....	.....	.....
Starksboro,	1700	6360	161 83	600	3129	75 83	400	1435	27 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Vergennes,	99	4252	52 10	95	2852	18 50	4	390	33 60	.....	.....	.....	.....	.....	.....	.....	.....	.....
Waltham,	112	1000	78 00	50	300	42 00	62	700	36 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Weybridge,	364	5809	69 56	115	2025	25 06	249	3784	44 50	.....	.....	.....	.....	.....	.....	.....	.....	.....
Whiting,	331	3736	79 15	127	1000	18 50	174	2736	60 65	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total,	23065	177493	3162 76	5211	51641	805 05	10832	142092	1865 39	1130	1749	71 00	2130	8833	187 00	2431	6358	186 72

* \$47.00 appropriated for the poor. † \$25.00 paid to the town of Chittenden,

List of Lands Sequestered in the County of Bennington for Public, Pious, Charitable and other uses, 1878.

20

PURPOSES OF SEQUESTRATION.

TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.			For Burr and Burton Seminary.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Arlington,	681	4255	333 00	385	1920	148 00	296	2335	185 00									
Bennington,	400	2800	32 75				400	2800	32 75									
Dorset,	419	6250	289 31	5	1500	175 50	414	4750	113 81									
Glastenbury,	100	416	24 96				100	416	24 96									
Landgrove,		none.																
Manchester,	514	10065	261 15	214	4065	141 14	300	6000	120 01									
Peru,	1132	3852	83 50	532	2115	42 75	600	1738	40 75							29	500	
Pownal,	856	8787	286 46	144	1795	100 64	712	6392	185 82									
Readsboro,		none.																
Rupert,	926	8411	79 88				926	8411	79 88									
Sandgate,	330	1515	31 95	183	565	13 50	147	950	18 45									
Searsburgh,	656	650	42 80	328	325	21 60	328	325	21 20									
Shaftsbury,	1331		655 00	320		85 00	1011	8494	570 00									
Stamford,	300	400	4 00				300	400	4 00									
Sunderland,	934	4387	77 10	317	2144	30 00	617	2243	47 10									
Winhall,	974	1386	61 23				974	1386	61 23									
Woodford,	1680	1680	126 85	575	575	34 85	1105	1105	92 00									
Total,	11233	54854	2389 94	3003	15004	792 98	8230	48345	1596 96							29	500	

List of Lands Sequestered in the County of Caledonia for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.

TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.			For Dartmouth College.		
	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.
Barnet,	1137	6950	106 34	354	1650	19 50	682	4300	74 00	100	1000	12 84	120	500	9 16	.....	.....	.....
Burke,	1167	7835	101 43	581	3350	39 13	290	2575	23 81	176	910	29 33	120	500	9 16	.....	.....	.....
Danville,	1136	10270	215 35	198	1915	36 96	280	2290	48 65	301	2800	55 19	357	3265	74 55	.....	.....	.....
Groton,	1396	7600	174 00	570	2500	13 00	288	2000	40 00	250	1800	25 00	288	1300	96 07	.....	.....	.....
Hardwick,	1300	12100	167 10	320	2660	32 00	380	3090	41 10	280	3150	40 00	320	3200	54 00	.....	.....	.....
Kirby,	304	1731	58 03	.....	.....	.....	.....	.....	.....	160	800	32 00	144	931	26 03	.....	.....	.....
Lyndon,	1794	14758	240 39	535	4053	64 60	458	2628	42 29	391	3675	65 17	410	4402	68 33	.....	.....	.....
Newark,	1461	4409	44 52	581	2445	31 03	290	1078	13 49	295	443	none.	295	443	none.	.....	.....	.....
Peacham,	999	2073	97 65	199	398	15 00	800	1650	82 65	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ryegate,	541	8804	76 00	208	2478	26 00	333	6326	50 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Sheffield,	980	3892	110 54	280	1890	34 20	280	735	31 95	.....	.....	.....	.....	.....	.....	.....	.....	.....
St. Johnsbury,	1566	22960	224 16	666	11400	76 26	299	4825	51 90	280	800	27 00	140	467	17 39	.....	.....	.....
Stannard,	400	2300	47 00	100	400	8 00	100	500	12 00	300	3530	54 00	300	3205	42 00	.....	.....	.....
Sutton,	2926	10725	33 71	916	3750	21 85	146	825	11 86	100	600	12 00	100	800	15 00	.....	.....	.....
Walden,	1400	6907	140 71	572	2226	52 75	304	1632	29 44	768	2850	none.	1096	3300	none.	.....	.....	.....
Waterford,	1422	10520	217 73	353	2705	48 52	353	3040	70 87	206	1204	26 85	318	1845	31 67	.....	.....	.....
Wheelock,	24300	568	34 02	150	284	17 01	150	284	17 01	358	2300	40 16	388	2475	58 18	.....	.....	.....
Total,	44229	134402	2088 68	6583	44604	535 81	5433	37778	641 02	3965	25862	419 54	4276	26133	492 31	24000	.....	.....

List of Lands Sequestered in the County of Chittenden for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.

TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.			For Mary Fletcher Hospital.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Bolton,	603	1125	65 50	...	...	...	603	1125	65 50	...	...	...	...	...	...	...	...	...
Burlington,	356	15110	533 75	87	5700	446 50	269	9410	87 25	...	...	...	...	...	...	...	...	...
Charlotte,	1092	18057	270 13	431	7618	147 35	661	10439	122 78	...	...	...	...	...	...	425	6375	400 00
Colchester,	1174	15220	192 00	344	4785	54 00	830	10435	138 00	...	...	...	...	...	...	...	...	...
Essex,	1205	10770	301 00	545	5270	194 50	660	5500	106 50	...	...	...	...	...	...	...	...	...
Hinesburgh,	1335	17200	242 70	435	4950	84 80	900	12260	151 90	...	...	...	...	...	...	...	...	...
Huntington,	928	9820	101 63	516	366	' 8 50	785	2025	*56 50	...	...	...	...	...	...	...	...	...
Jericho,	1301	2391	65 00	294	3470	26 00	634	6350	75 63	...	...	...	...	...	...	...	...	...
Milton,	1340	18840	261 C2	630	10740	181 51	710	8100	130 51	...	...	...	...	...	...	...	...	...
Richmond,	658	2523	93 98	211	550	25 60	445	1973	68 38	...	...	...	...	...	...	...	...	...
Shelburne,	737	10940	180 30	383	5984	101 43	354	5006	78 87	...	...	...	...	...	...	...	...	...
So. Burlington,	720	13240	258 00	310	4840	91 00	310	7400	167 00	...	...	...	125	1000	none.	...	...	...
St. George,	none.	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Underhill,	1098	10988	104 38	100	1000	4 50	822	9388	93 88	...	...	...	176	600	600	...	...	...
Westford,	1061	9045	118 67	430	2790	31 00	631	6255	87 67	...	...	...	...	...	...	...	...	...
Williston,	362	2350	66 18	176	1200	27 12	187	1150	39 06	...	...	...	...	...	...	...	...	...
Total,	13970	157619	2854 24	4891	69213	1373 81	8801	96806	1469 43	...	...	...	301	1600	600	425	6375	400 00

* \$19.00 to Richmond and Williston.

List of Lands Sequestered in the County of Essex for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.															
TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.		
	Aores,	Appraisal.	Rents.	Aores.	Appraisal.	Rents.	Aores.	Appraisal.	Rents.	Aores.	Appraisal.	Rents.	Aores.	Appraisal.	Rents.
Bloomfield,	1276	2630	87 30	652	780	10 00	624	1850	77 30	...	...	...	...	...	...
Brighton,	1747	6094	174 40	835	3096	100 50	264	1126	19 65	...	...	...	339	972	27 25
Brunswick,	780	515	31 50	390	260	15 50	195	130	8 00	...	...	...	...	...	...
Canaan,	300	1800	33 00	...	...	...	200	1000	18 00	...	...	...	100	800	15 00
Concord,	2487	12070	358 42	415	2435	46 00	372	1520	45 00	...	...	...	1367	6135	237 92
East Haven,	1500	3275	58 00	600	1450	34 00	300	800	18 00	...	...	...	300	375	none.
Granby,	900	862	12 00	300	250	6 00	600	612	6 00	...	...	...	...	...	...
Guildhall,	750	1050	40 87	250	400	10 00	500	800	30 87	...	...	...	...	...	...
Lemington,	1025	1275	26 62	750	800	11 02	275	475	15 60	...	...	...	...	...	...
Lunenburg,	1048	4430	70 31	351	1550	18 25	697	2880	52 06	...	...	...	...	...	...
Maldstone,	970	...	22 93	140	...	2 01	830	...	20 92	...	...	...	...	...	...
Victory,	1100	2350	81 50	500	1050	40 00	200	450	8 00	...	...	...	200	550	25 50
Total,	13883	36351	996 85	5183	12071	293 28	5057	11643	319 40	1142	3830	68 50	2306	8832	305 67

List of Lands Sequestered in the County of Franklin for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.

TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.			For Middlebury College.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Bakersfield,	978	5843	105 02	490	3366	60 63	488	2477	44 39	287	3000	20 00	470	5400	54 50	50	560	6 00
Berkshire,	1456	17905	148 23	299	4005	32 47	400	5500	41 26	381	4550	34 42	290	3030	36 36			
Enosburgh,	1402	16089	180 57	357	4284	52 00	374	4225	57 80									
Fairfax,	1241	13840	163 33	256	2560	32 00	985	11280	131 33									
Fairfield,	1532	13471	164 71	550	4855	60 00	932	8056	98 71									
Fletcher,	1069	6751	105 63	578	4009	56 63	191	2142	32 00	200	450	13 00	100	150	4 00			
Franklin,	1409	14942	118 50	630	6335	47 30	311	3203	18 70	227	1891	18 37	301	3913	34 13			
Georgia,	920	13350	122 64	300	4050	39 98	620	9300	82 66									
Highgate,	1556	18640	142 08	570	7700	59 50	986	10940	82 58									
Montgomery,	1692	15400	156 07	392	2600	38 40	588	8000	58 47	320	2800	25 20	392	2000	34 00			
Richford,	1450	8335	143 50	350	2525	35 00	500	2770	46 50	300	1940	30 00	300	1100	32 00			
Sheldon,	1226	12194	100 00	265	2220	17 00	961	9974	83 00									
St. Albans,	495	7924	61 58	168	2680	20 61	327	5244	40 97									
Swanton,	1200	18149	131 51	500	8500	49 50	700	9649	82 01									
Total,	17686	183833	1843 37	5705	59689	601 02	8363	92760	900 38	1715	14631	140 99	1853	15593	194 98	50	560	6 00

List of Lands Sequestered in the County of Grand Isle for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.

TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Alburgh,	none.	none.	...	...	...	...	...	...	...
Grand Isle,	30	480	65 00	30	480	65 00	...	...	...
Isle La Motte,	147	4000	142 00	98	2500	125 00	49	1500	17 00
North Hero,	128	1800	61 50	64	800	24 00	64	1000	37 50
South Hero,	128	1821	87 00	64	800	40 00	64	1024	47 00
Total,	433	8101	355 50	256	4580	254 00	177	3524	101 50

List of Lands Sequestered in the County of Lamoille for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.

TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.			For Middlebury College.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Belvidere,	1395	2993	148 00	479	719	12 60	524	786	35 50	492	738	35 50	500	750	65 00	.....	.....	.....
Cambridge,	1239	6455	103 26	310	1820	34 46	314	1760	24 40	200	1000	12 00	415	1875	32 50	.....	.....	.....
Eden,	4035	11642	374 35	442	1322	37 00	870	2475	67 85	745	2090	68 50	1978	5755	201 00	20	100	1 75
Elmore,	1900	19670	167 76	310	3320	21 00	295	3925	25 00	520	6800	48 50	495	3075	46 51	.....	.....	.....
Hydepark,	1644	12264	145 00	636	4616	44 00	336	2616	22 00	336	1766	33 00	336	2416	46 00	.....	.....	.....
Johnson,	2005	7772	237 47	622	3190	81 56	293	1100	28 16	430	1766	39 40	660	1716	88 35	.....	.....	.....
Morristown,	2180	23106	274 72	515	5884	59 47	881	9597	91 84	328	3200	42 00	456	4425	81 41	.....	.....	.....
Stowe,	1555	22900	188 01	650	9125	72 00	705	13175	98 01	.....	.....	.....	200	600	18 00	.....	.....	.....
Waterville,	none.	none.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wolcott,	1500	8700	148 00	600	3000	56 00	300	1700	30 00	300	2100	32 00	300	1900	30 00	.....	.....	.....
Total,	18053	115502	1786 67	4564	32996	417 49	4518	37134	422 76	3351	20310	310 90	5340	22512	608 77	20	100	1 75

List of Lands Sequestered in the County of Orange for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.																		
TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.			For Dartmouth College.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Bradford,	.....	None.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Brantree,	1600	7800	174 50	600	4600	91 50	300	1100	29 00	300	1300	30 00	400	800	24 00	.....	.....	.....
Brookfield,	1278	12560	254 41	315	2055	43 50	333	5900	101 66	315	2870	58 25	315	1735	51 00	.....	.....	.....
Chelsea,	1777	4243	284 80	790	1345	112 40	300	900	31 40	387	1398	90 00	300	600	51 00	.....	.....	.....
Corinth,	300	2400	42 34	300	2400	42 34	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Fairlee,	747	3195	82 17	293	1285	30 00	454	1910	52 17	.....	.....	.....	.....	.....	.....	.....	.....	.....
Newbury,	865	9900	105 00	315	3600	33 00	550	6300	72 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Orange,	1500	4470	163 70	600	1350	56 00	300	1480	34 00	200	440	22 00	400	1200	51 70	.....	.....	.....
Randolph,	1450	13615	308 25	472	5165	88 99	423	3850	63 24	225	2050	109 62	330	2550	46 40	.....	.....	.....
Strafford,	999	3871	157 50	345	1107	42 50	654	2764	115 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Thetford,	1333	26280	309 52	640	6115	138 84	533	16350	147 55	.....	.....	.....	.....	.....	.....	360	3815	23 13
Topsham,	1183	9696	96 13	454	5508	28 37	729	4188	67 76	.....	.....	.....	.....	.....	.....	.....	.....	.....
Tunbridge,	619	4700	172 28	319	1300	58 62	600	3400	113 66	.....	.....	.....	.....	.....	.....	.....	.....	.....
Vershire,	482	2320	94 99	.....	.....	.....	Not valued.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Washington,	1500	5800	207 50	600	1800	60 00	300	1300	40 00	120	340	4 60	362	1980	50 39	.....	.....	.....
West Fairlee,	901	2720	126 30	300	900	32 00	401	1220	37 50	300	1400	60 00	300	1300	50 00	.....	.....	.....
Williamstown,	1378	18438	346 52	512	6013	127 67	303	3850	46 00	.....	.....	.....	.....	.....	.....	200	600	48 30
Total,	17912	132008	2912 91	6855	44543	985 73	6180	54512	1043 81	2131	13638	452 17	2686	14900	372 77	560	4415	71 43

List of Lands Sequestered in the County of Orleans for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.

TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.			For Middlebury College.		
	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.
Albany,	6069	44590	672 88	442	3525	30 05	335	2650	42 00	352	4300	47 69	300	2150	36 64	4620	31965	516 00
Barton,	1265	8738	184 79	320	2464	40 00	319	3046	39 95	312	1346	53 83	313	1882	51 01	.....	.....	.....
Brownston,	946	4550	41 12	236	1100	20 84	336	1950	45 00	374	1500	41 12	.....	.....	.....	.....	.....	.....
Charleston,	1879	10806	161 17	773	3889	51 52	326	1900	29 26	311	2217	23 00	469	2800	52 39	.....	.....	.....
Coventry,	1344	15860	173 58	487	5155	50 00	270	2100	33 00	273	3950	46 53	.....	.....	.....	.....	.....	.....
Craftsbury,	1420	7025	209 39	320	2500	44 70	320	1900	40 00	460	1100	88 69	384	4655	44 00	.....	.....	.....
Derby,	1189	12273	185 82	311	2815	39 48	300	3088	50 41	271	3145	45 25	320	1525	36 00	.....	.....	.....
Glover,	1346	11677	176 95	515	3055	31 13	319	2656	33 33	312	2931	43 29	296	3225	50 18	.....	.....	.....
Greensboro,	1430	7953	135 21	490	2628	39 00	260	1425	28 00	309	1900	32 51	400	3040	69 20	.....	.....	.....
Holland,	1241	5860	137 28	283	1350	28 28	313	1240	26 73	380	1070	27 02	300	2000	35 70	.....	.....	.....
Irasburgh,	1650	10860	123 10	660	3100	55 00	330	3700	43 20	350	2800	18 90	336	2200	55 25	.....	.....	.....
Jay,	7701	33050	717 06	.....	.....	.....	1690	5800	88 40	.....	.....	.....	.....	.....	.....	330	260	6 00
Lowell,	1800	945	41 35	.....	.....	.....	545	203	6 40	545	263	17 85	6011	27250	628 66	.....	.....	.....
Morgan,	1028	7950	98 90	354	2300	27 70	354	2050	28 70	197	2400	22 00	710	380	17 10	.....	.....	.....
Newport,	2083	10461	231 74	354	1875	35 60	379	2586	37 75	229	1300	35 39	123	1200	20 50	.....	.....	.....
Salem,	695	5185	70 00	165	1170	16 50	230	1165	20 50	150	1500	15 00	1121	4700	123 00	.....	.....	.....
Troy,	none.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	150	1350	18 00	.....	.....	.....
Westfield,	1687	6681	145 58	490	2695	39 26	595	1251	44 97	362	2010	39 75	240	425	21 60	.....	.....	not
Westmore,	1700	2610	92 69	534	625	24 52	436	1160	26 17	292	350	30 00	146	200	12 00	292	275	rent.
Total,	30473	207074	3597 61	6534	40546	573 58	7607	39870	603 77	5459	54082	632 82	11619	58982	1271 23	5242	32500	522 00

List of Lands Sequestered in the County of Rutland for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.																		
TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont,			For the poor.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Benson,	883	14180	188 29	...	...	...	361	6830	91 29	222	3150	48 00	300	4200	49 00	...	...	...
Brandon,*	322	not val'd.	8 49	...	not val'd.	...	...	...	...	...	...	...	...	...	...	...	...	...
Castleton,	60	1000	60 00	60	1000	60 00	...	...	...	...	...	...	...	...	...	...	...	...
Chittenden,	1460	2510	84 85	642	810	36 70	300	1100	36 56	312	250	3 00	206	350	8 60	...	...	...
Clarendon,	none.	...	none.	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Danby,	650	8950	208 00	200	2500	80 00	450	6450	128 00	...	...	...	...	...	...	...	...	...
Fairhaven,	300	900	13 42	...	...	...	100	300	4 42	100	200	3 00	100	400	6 00	...	...	...
Hubbardton,	330	2314	67 40	30	240	13 00	300	2074	54 40	...	...	...	...	...	...	...	...	...
Ira,	30	300	30 00	30	300	30 00	...	...	...	...	...	...	...	...	...	...	...	...
Mendon,	1795	3800	120 00	160	800	15 00	545	...	...	...	...	...	...	...	...	...	...	...
Middleton,	† 75	375	13 00	...	...	...	75	375	13 00	...	...	...	...	...	...	...	...	...
Mount Holly,	† 320	2040	50 00	...	...	...	320	2040	50 00	...	...	...	...	...	...	...	...	...
Mount Tabor,	1477	3960	78 00	400	800	28 00	1077	3100	50 00	...	...	...	...	...	...	...	...	...
Pawlet,	1006	10209	318 83	311	3523	104 25	695	6686	214 58	...	...	...	...	...	...	...	...	...
Pittsfield,	140	1120	17 50	50	750	10 00	50	350	7 50	40	20	none.	...	...	...	...	...	...
Pittsford,	761	4785	135 81	298	1085	56 35	463	3700	79 46	...	...	...	...	...	...	...	...	...
Poultney,	861	5560	167 67	188	1800	38 00	673	3760	129 67	...	...	...	...	...	...	...	...	...
Rutland,	1117	4800	98 44	415	1050	18 00	702	3750	80 44	...	...	...	...	...	...	...	...	...
Sherburne,	324	600	10 00	324	300	20 00	648	2400	31 27	...	...	...	...	...	...	...	...	...
Shrewsbury,	100	450	20 00	...	...	...	100	450	20 00	...	...	...	...	...	...	...	...	...
Sudbury,	739	5330	175 34	310	2400	75 00	429	2930	100 34	...	...	...	...	...	...	...	...	...
Tinmouth,	320	3900	48 50	160	1500	16 00	160	1500	32 50	...	...	...	...	...	...	...	...	...
Wallingford,	517	4000	59 50	267	400	20 00	250	3600	39 50	...	...	...	...	...	...	...	...	...
Wells,	432	3522	68 50	...	...	...	432	3522	68 50	...	...	...	...	...	...	...	...	...
West Haven,	381	5720	95 70	110	1800	37 20	47	720	14 50	100	1800	20 00	124	1400	14 00	...	...	...
Total,	14350	89365	2337 24	4277	21058	665 99	8177	55837	1275 92	1319	6620	124 00	1276	7350	102 60	324	600	10 00

* Rents of all other lands paid into town treasury as taxes.

† Paid to town of Wallingford.

‡ Paid to town of Wells.

List of Lands Sequestered in the County of Washington for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.																		
TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.			For Middlebury College.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Barre,	1450	22450	341 00	580	7800	127 26	290	5350	68 74	290	2100	96 66	290	7200	48 34	754	10250	100 04
Berlin,	938	24585	116 15	200	4320	25 00	738	20265	91 15									
Cabot,	1534	11195	200 67	543	3320	56 65	309	3075	48 95	334	2400	48 00	347	2400	47 07			
Calais,	1743	20737	240 08	706	8969	90 00	349	3969	48 70	349	3888	49 50	349	3911	51 88			
Duxbury,	1386	5468	74 18	691	2425	36 50	695	3043	37 68									
E. Montpelier,	1162	21250	251 14	640	12050	144 48	322	5800	69 46				200	3400	37 20			
Fayston,	1797	5160	103 52	330	1520	26 00	660	2495	41 52	220	500	12 00	547	515	24 00			
Marshfield,	1330	3026	79 90	320	713	12 00	320	1025	17 40	320	702	13 00	370	586	37 50			
Middlesex,	1103	15629	118 40	200	3000	19 50	903	12629	98 90									
Montpelier,	210	5300	34 47							160	4800	34 47	50	500	none.			
Moretown,	1343	5400	89 00	352	1500	19 50	991	3900	69 50									
Northfield,	2637	33540	348 93	258	3825	36 71	921	12600	119 45	377	6900	58 00	872	6135	84 76		4080	50 01
Plainfield,	572	5815	123 34	286	2908	61 67	286	2908	61 67									
Roxbury,	1480	11840	191 00	472	3776	63 00	336	2688	31 00	336	2688	46 00						
Waitsfield,	1020	8950	94 58	320	4500	49 06	200	3000	15 52									
Warren,	1523	23170	143 28				902	14870	87 75									
Waterbury,	1301	11445	162 99	387	3640	28 50	914	7805	134 49									
Woodbury,	1680	7879	113 12	300	1425	21 00	680	3374	45 98	300	1480	23 14						
Worcester,	1224	6520	83 00	300	1050	16 00	624	3700	50 00							300	1770	18 00
Total,	25433	249359	2908 75	6885	66741	831 83	10449	112496	1137 86	2686	25458	380 77	4737	34285	458 25	754	10250	100 04

List of Lands Sequestered in the County of Windham for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.

TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.			For Middlebury College.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Athens,	439	1245	108 26	271	813	90 16	168	432	18 10	.....	.....	.....	.....	.....	.....	.....	.....	.....
Brattleboro,	none.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Brookline,	208	1057	84 92	208	1057	84 92	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Dover,	183	390	16 24	.....	.....	.....	183	390	16 24	.....	.....	.....	.....	.....	.....	.....	.....	.....
Dummerston,	none.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Grafton,	840	5370	122 12	320	1320	56 00	520	4050	66 12	.....	.....	.....	.....	.....	.....	.....	.....	.....
Guilford,	700	7091	129 37	350	4230	77 50	350	2861	51 87	.....	.....	.....	.....	.....	.....	.....	.....	.....
Halifax,	357	2746	42 12	20	50	0 00	337	2696	42 12	.....	.....	.....	.....	.....	.....	.....	.....	.....
Jamaica,	1679	12819	254 54	389	7016	112 84	790	3353	101 70	.....	.....	.....	.....	.....	.....	.....	.....	.....
Londonberry,	1917	12525	251 67	494	3302	43 62	495	3303	42 63	473	3000	84 46	500	2450	40 00	.....	.....	.....
Marlboro,	882	3817	92 05	.....	.....	.....	882	3817	92 05	.....	.....	.....	455	2920	79 96	.....	.....	.....
Newfane,	700	1300	63 50	250	500	22 50	450	800	41 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Putney,	140	500	15 64	140	500	15 64	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Rockingham,	600	3400	134 95	300	1533	62 80	300	1867	72 15	.....	.....	.....	.....	.....	.....	.....	.....	.....
Somerset,	200	222	12 00	.....	.....	.....	200	222	12 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Strafton,	1000	900	52 00	800	600	13 00	160	250	38 00	.....	.....	.....	.....	.....	.....	40	50	1 00
Townshend,	none.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Vernon,	628	3460	50 69	288	2100	21 69	340	1360	29 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wardsboro,	298	475	33 95	160	350	18 00	238	125	15 95	.....	.....	.....	.....	.....	.....	.....	.....	.....
Westminster,	183	1685	201 68	183	1685	201 68	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Whitingham,	none.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wilmington,	225	1575	39 80	.....	.....	.....	225	1575	39 80	.....	.....	.....	.....	.....	.....	.....	.....	.....
Windham,	511	2605	65 72	311	1780	46 72	200	825	22 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total,	11690	63182	177422	4484	26836	867 07	58 38	27296	701 78	473	3000	81 46	955	5370	119 96	40	50	1 00

List of Lands Sequestered in the County of Windsor for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.

TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.			For the support of County Gram. Schools.			For the University of Vermont.			For Academy and Seminary.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Andover,	655	3190	77 20	250	1500	24 50	405	1690	52 70	.....	.....	.....	.....	.....	.....	.....	.....	.....
Baltimore,	none.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Barnard,	741	3240	92 42	300	1250	26 00	740	1800	60 42	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bethel,	1931	9675	281 31	509	2840	74 59	453	1945	55 79	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bridgewater,	880	2095	130 32	.....	.....	.....	880	2095	130 32	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cavendish,	none.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chester,	960	3893	92 94	339	1585	32 34	621	2308	60 60	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hartford,	1168	10980	162 45	342	2930	51 45	826	8050	108 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hartland,	798	7605	209 73	364	3250	108 98	434	4355	100 75	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ludlow,	506	9217	85 09	179	1432	22 30	327	7786	63 19	.....	.....	.....	.....	.....	.....	.....	.....	.....
Norwich,	881	5840	162 75	358	2224	62 99	523	3466	99 76	.....	.....	.....	.....	.....	.....	.....	.....	.....
Plymouth,	1203	5200	95 91	380	1600	23 24	823	3600	72 67	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pomfret,	1129	12050	223 58	320	3100	49 00	745	6275	115 58	.....	.....	.....	.....	.....	.....	.....	.....	.....
Reading,	133	930	7 28	133	930	7 28	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Rochester,	1540	5750	188 50	600	2800	107 00	440	1856	*45 50	.....	.....	.....	.....	.....	.....	.....	.....	.....
Royalton,	1315	10925	245 76	255	1875	66 36	330	3000	52 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Sharon,	672	3495	117 62	250	800	46 00	382	2495	62 62	.....	.....	.....	.....	.....	.....	.....	.....	.....
Springfield,	1003	8006	227 66	341	3110	56 83	602	5495	170 83	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stockbridge,	1663	5195	154 30	833	3025	104 25	830	2190	50 65	.....	.....	.....	.....	.....	.....	.....	.....	.....
Weathersfield,	150	1085	26 35	150	1085	26 35	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Weston,	864	5590	89 65	200	1480	37 75	660	5190	51 90	.....	.....	.....	.....	.....	.....	.....	.....	.....
West Windsor,	none.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Windsor,	300	200	12 00	300	200	12 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Woodstock,	725	4443	120 84	317	1704	52 83	408	2739	68 01	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total,	19217	119253	2803 66	6920	38700	995 04	10489	66619	1420 69	.....	.....	.....	.....	.....	.....	.....	.....	.....

* \$6.00 paid to Braintree.

† Paid to Royalton Academy.

‡ Paid to Princeton Seal Seminary.

List of Lands Sequestered in the Gores and Unorganized Towns for Public, Pious, Charitable and other uses, 1878.

PURPOSES OF SEQUESTRATION.

TOWNS.	For all (public, pious and charitable) uses.			For religious uses.			For the support of town schools.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Averill,	1248	1050	20 00	624	500	10 00	312	250	5 00

STATE OF VERMONT.

OFFICE OF SECRETARY OF STATE, }
Northfield, December 21, 1878. }
I hereby certify that the foregoing is a true schedule of Lands Sequestered in the State of Vermont, as appears from the abstracts thereof, made agreeably to the provisions of No. 20, Acts of 1876, now on file in this office.
GEORGE NICHOLS, Secretary of State.

APPENDIX H

REPORT TO THE LEGISLATURE OF 1882 ON ACREAGE AND RENTALS OF
LEASE LANDS

List of Lands Sequestered in the County of Addison, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.												
TOWNS.	For public, pious, charitable uses.			For religious uses.			For the support of town schools.			For support county Gram'r schools.		
	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.
Addison,	265	4593	65 83				420	6864	167 67			
Bridport,	351	4210	74 00				720	11315	139 27			
Bristol,				60	3309	14 00	955	12050	106 25			
Cornwall,	16	10425					80	669	32 13			
Ferrisburgh,	400	6875	56 00				1122	17634	190 21			
Goshen,	100	1000	21 30	*100	1200	25 00	200	200	10 00	400	500	15 00
Granville,	1335	3225	85 00	510	1800	31 00	180	425	10 00	300	2700	26 00
Hancock,	1273	1329	58 50				200	117	7 00	80	217	13 00
Leicester,							275	902	51 00			
Lincoln,	300	5500	28 00				300	3300	18 00		400	4800
Middlebury,	212	42200	60 00				500	4200	123 00			43 00
Monkton,				234	3210	21 91	598	5718	93 90			
New Haven,	213	3670	45 40				433	6945	163 14			
Orwell,				541	5585	65 01	1404	16094	53 12			
Panton,	1	20	60	121	2070	23 80	245	2688	56 30			
Ripton,	360	325	29 00				850	1225	70 00			
Salisbury,	5	150	9 00				100	500	20 00	100	100	6 00
Shoreham,				336	6465	84 84	864	15935	199 23			
Starksboro,	1700	14200	161 83	450	5900	52 83	450	3150	31 50	350	3100	42 50
Vergennes,				100	4400	24 50	2	825	31 60			
Waltham,	62	700	36 00				50	500	42 00			
Weybridge,	113	2520	25 00				263	6530	48 40			
Whiting,	157	1000	18 50				174	2736	60 65			

*Paid to Chittenden.

List of Lands Sequestered in the County of Bennington, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.

TOWNS.	For public, pious, charitable uses.			For religious uses.			For the support of town schools.			For support coun- ty Gram'r schools.			For the Universi- ty of Vermont.					
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Arlington,	355	1750	131 50	.....	.....	.....	251	1180	183 56	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bennington,	.....	.....	.....	.....	.....	.....	400	2800	32 75	.....	.....	.....	.....	.....	.....	.....	.....	.....
Dorset,	.....	.....	.....	.....	.....	.....	350	3642	109 27	.....	.....	.....	.....	.....	.....	.....	.....	.....
Glastenbury,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Landgrove,	214	4065	75 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Manchester,	600	2190	141 14	.....	.....	.....	300	6000	120 01	.....	.....	.....	.....	.....	.....	.....	.....	.....
Peru,	195	2190	39 00	.....	.....	.....	500	2080	38 50	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pownal,	195	1795	100 64	.....	.....	.....	718	6791	187 02	.....	.....	.....	.....	.....	.....	.....	.....	.....
Readsboro,	14	1925	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Rupert,	31	1550	140 00	.....	.....	.....	1016	8250	97 91	.....	.....	.....	.....	.....	.....	.....	.....	.....
Sandgate,	183	900	13 50	.....	.....	.....	259	2375	18 45	.....	.....	.....	.....	.....	.....	.....	.....	.....
Searsburgh,	328	375	21 60	.....	.....	.....	328	425	20 85	.....	.....	.....	.....	.....	.....	.....	.....	.....
Shaftsbury,	320	2100	85 00	.....	.....	.....	921	9270	670 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stamford,	.....	.....	.....	.....	.....	.....	150	450	24 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Sunderland,	317	2144	30 00	.....	.....	.....	617	2244	47 10	.....	.....	.....	.....	.....	.....	.....	.....	.....
Winhall,	.....	.....	.....	.....	.....	.....	975	2556	61 23	.....	.....	.....	.....	.....	.....	.....	.....	.....
Woodford,	575	575	34 85	.....	.....	.....	1105	1105	92 00	.....	.....	.....	.....	.....	.....	.....	.....	.....

*For Burr & Burton Seminary.

List of Lands Sequestered in the County of Caledonia, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.

TOWNS.	For public, pious, charitable uses.			For religious uses.			For the support of town schools.			For support county Gram'r schools.			For the University of Vermont.			For Middlebury College.		
	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.
Barnet.	...	...	...	321	2350	18 50	733	6450	74 00	100	1100	12 84	One b	...	...	...	...	...
Burke.	367	2600	24 41	289	1360	14 72	290	2600	23 81	176	1025	29 33	120	500	9 16	...	...	...
Danville,	...	...	...	198	1980	37 06	310	3100	48 65	260	2600	50 60	360	3600	77 50	*81	810	45 46
Groton,	288	1300	none	370	1000	13 00	288	2100	40 00	250	1600	26 00	288	1300	36 00	...	...	...
Hardwick,	320	2800	32 00	...	...	...	320	2677	40 00	425	3750	52 01	350	3040	55 00	...	...	...
Kirby,	...	...	...	...	...	...	...	...	...	160	760	32 00	145	930	26 03	...	...	...
Lyndon,	518	4596	62 14	...	...	...	342	2743	43 94	389	3630	64 84	410	4402	68 34	...	...	...
Newark,	581	2445	31 03	...	...	...	290	1078	13 49	295	885	...	295	885	...	...	...	...
Peacham,	300	1557	27 50	...	...	...	700	3400	77 61	...	...	...	...	...	...	...	...	...
Ryegate,	216	2700	25 50	...	...	...	350	7400	50 00	...	...	...	...	...	...	...	...	...
Sheffield,	280	1950	33 60	...	...	...	280	1000	34 62	280	1000	27 00	140	467	17 50	...	...	...
St. Johnsbury,	669	12282	80 15	...	...	...	257	4500	41 30	300	4000	54 00	300	3575	42 00	...	...	...
Stannard,	106	150	8 00	...	...	...	106	250	12 00	106	250	12 00	106	300	15 00	...	...	...
Sutton,	500	400	18 00	...	...	...	560	550	21 00	...	...	...	...	...	...	50	50	1 00
Walden,	558	2216	39 61	...	...	...	304	1340	28 90	226	1404	26 85	318	1845	31 67	...	...	...
Waterford,	353½	2750	48 52	...	...	...	353½	2900	70 87	353½	2075	40 16	388½	2650	58 18	...	...	...
Wheelock,	...	...	...	150	...	17 01	150	...	17 01	...	...	...	...	...	...	†24000	...	238 00

*For Phillips Academy.

†For Dartmouth College and Moore's Charity School.

List of Lands Sequestered in the County of Chittenden, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.

TOWNS.	For public, pious, charitable uses.			For religious uses.			For the support of town schools.			For support county Gram'r schools.			For University of Vermont.			Rents.		
	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.
Bolton,	500	600	.....	.....	.....	.....	600	3000	60 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Burlington,	199	101700	6412 00	.....	.....	.....	474	14910	164 15	.....	.....	.....	.....	.....	.....	.....	.....	.....
Charlotte,	354	7432	47 35	*78	2340	100 00	661	12082	122 78	.....	.....	.....	.....	.....	.....	†420	8400	600 00
Colchester,	.....	.....	.....	344	6955	54 00	831	12621	138 31	.....	.....	.....	.....	.....	.....	†245	9000	600 00
Essex,	553	6270	184 50	.....	.....	.....	660	6600	106 50	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hinesburgh,	435	5300	90 80	.....	.....	.....	900	20700	151 90	.....	.....	.....	.....	.....	.....	.....	.....	.....
Huntington,	.....	.....	.....	50	40	1 50	466	326	7 00	503	1425	37 50	.....	.....	.....	§283	600	19 00
Jericho,	294	4185	26 00	.....	.....	.....	634	7705	75 63	.....	.....	.....	.....	.....	.....	.....	.....	.....
Milton,	702	10970	122 70	.....	.....	.....	811	10698	138 50	.....	.....	.....	.....	.....	.....	.....	.....	.....
Richmond,	349	1255	27 50	241	1100	24 60	243	1750	41 88	.....	.....	.....	.....	.....	.....	.....	.....	.....
Shelburne,	383	7795	101 43	.....	.....	.....	354	5907	78 87	.....	.....	.....	.....	.....	.....	.....	.....	.....
South Burlington,	769	16876	91 00	.....	.....	.....	300	13403	167 00	.....	.....	.....	100	2000	.....	.....	.....	.....
St. George,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Underhill,	.....	.....	.....	.....	.....	.....	||812	9000	93 88	.....	.....	.....	.....	.....	.....	.....	.....	.....
Westford,	430	3350	39 00	.....	.....	.....	631	7505	87 60	.....	.....	.....	.....	.....	.....	.....	.....	.....
Williston,	.....	.....	.....	182	1175	28 12	173	1150	39 06	.....	.....	.....	.....	.....	.....	.....	.....	.....

*Methodist Episcopal Church. †Mary Fletcher Hospital. ‡Essex Classical Institute. §Schools in Richmond and Williston. ||Schools.

List of Lands Sequestered in the County of Essex, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.

TOWNS.	For public, pious, charitable uses.			For religious uses.			For the support of town schools.			For support county gram'r schools.			For University of Vermont.			Acres.	Appraisal.	Rents.
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.			
Bloomfield,	672	2048	70 47	...	...	...	612	3212	108 28	...	...	...	...	...	...	...	...	...
Brighton,	771	2300	91 50	...	...	...	328	1400	14 65	309	700	25 00	339	900	18 00	...	...	...
Brunswick,	390	860	15 80	...	...	...	390	470	14 00	...	...	...	...	...	...	...	...	...
Canaan,	300	300	36 00	...	...	...	300	1000	48 00	...	...	...	...	...	...	...	...	...
Concord,	415	2450	46 00	...	...	...	372	1665	45 00	333	1875	51 20	1317	6600	193 26	...	...	...
East Haven,	600	1925	34 00	...	...	...	300	775	18 00	300	675	21 02	300	700	none	...	...	...
Granby,	300	440	21 00	...	...	...	600	1070	50 00	...	...	...	...	...	...	...	...	...
Guildhall,	...	...	...	150	650	10 00	450	2200	30 75	...	...	...	...	...	...	...	...	...
Lemington,	500	1160	02	...	...	...	525	1440	24 60	...	...	...	...	...	...	...	...	...
Lunenburg,	350	2265	25 16	...	...	...	617	3890	44 80	...	...	...	...	...	...	...	...	...
Maidstone,	...	...	...	...	...	...	660	...	20 92	...	...	...	...	...	...	...	...	...
Victory,	1100	2250	81 00	500	1050	40 00	200	450	8 00	200	200	8 00	200	600	25 00	...	...	...

List of Lands Sequestered in the County of Franklin, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.

TOWNS.	For public, pious, charitable uses.			For religious uses.			For the support of town schools.			For support county Gram'r schools.			For University of Vermont.			For Middlebury College.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Bakersfield,	...	...	...	491	3366	60 43	488	2477	44 39	...	...	...	...	...	...	...	...	...
Berkshire,	...	...	...	299	4005	32 47	400	5500	41 26	287	3000	20 00	...	...	...	...	...	...
Enosburgh,	...	...	...	356	5275	52 00	371	5380	57 80	381	5405	34 82	470	5400	54 50	...	...	...
Fairfax,	307	3732	34 79	...	...	...	933	10690	131 51	...	...	...	...	...	...	...	...	...
Fairfield,	650	7256	60 00	...	...	...	1057	11000	111 45	...	...	...	...	...	...	50	670	6 00
Fletcher,	600	4800	56 53	...	...	...	300	2570	32 06	300	540	13 00	300	180	4 00	...	...	...
Franklin,	630	11020	47 30	...	...	...	311	5582	18 70	227	2875	18 37	301	7385	34 13	...	...	...
Georgia,	449	3480	43 34	...	...	...	513	6160	51 28	...	...	...	...	...	...	...	...	...
Hightgate,	570	10040	59 50	...	...	...	986	13110	82 58	...	...	...	...	...	...	...	...	...
Montgomery,	392	5600	38 40	...	...	...	588	11700	60 47	356	4836	27 20	392	2672	34 00	...	...	...
Richford,	350	3415	35 00	...	...	...	500	3890	46 50	300	2950	30 00	300	1375	32 00	...	...	...
Sheldon,	265	3330	17 00	...	...	...	961	14961	83 80	...	...	...	...	...	...	...	...	...
St. Albans,	...	...	...	168	3975	20 61	327	7800	40 97	...	...	...	...	...	...	...	...	...
Swanton,	...	...	...	500	12500	61 50	700	20605	82 01	...	...	...	...	...	...	...	...	...

List of Lands Sequestered in the County of Grand Isle, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.

TOWNS.	For public, pious, charitable uses.			For the support of town schools.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Alburgh,	6	9900	.....	.....	.....	.....
Grand Isle,	none	.....	.....	.....	.....	.....
Isle La Motte,	100	2250	125 00	50	1250	20 00
North Hero,	80	1200	24 00	64	1152	37 50
South Hero,	32	.....	10 00	64	.....	*47 00

* \$20.00 for schools in Grand Isle.

List of Lands Sequestered in the County of Lamoille, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.

TOWNS.	For public, pious, charitable uses.			For religious uses.			For the support of town schools.			For support county grammar schools.			For University of Vermont.			For Middlebury College.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Belvidere,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cambridge,	411	3225	37 50	.....	.....	.....	514	3450	35 40	150	1700	9 00	415	3150	32 50	.....	.....	.....
Eden,	442	1522	37 00	.....	.....	.....	870	2575	67 35	745	2350	68 50	1845	5325	189 00	.....	.....	.....
Elmore,	640	3400	48 00	.....	.....	.....	300	1850	27 00	320	1450	23 50	670	2950	77 50	220	950	.....
Hydepark,	336	3103	22 00	.....	.....	.....	708	5988	51 50	336	2766	32 99	336	2938	46 00	.....	.....	.....
Johnson,	637	2800	84 32	.....	.....	.....	295	1690	23 05	439	1475	40 30	379	2625	61 31	.....	.....	.....
Morristown,	665	7159	74 47	.....	.....	.....	545	7357	68 56	528	4400	55 50	456	4425	81 41	.....	.....	.....
Stowe,	325	5400	50 00	325	3625	22 00	1080	13775	98 03	.....	.....	.....	200	600	18 00	.....	.....	.....
Waterville,	none	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wolcott,	600	3000	56 00	.....	.....	.....	300	1700	30 00	300	2100	32 00	300	1900	30 00	.....	.....	.....

List of Lands Sequestered in the County of Orange, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.																		
TOWNS.	For public, pious, charitable uses.			For religious uses.			For the support of town schools.			For support county Gram'r schools.			For University of Vermont.			For Dartmouth College.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Bradford,	none	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Braintree,	600	4640	91 50	...	...	...	300	1000	29 00	...	300	1100	30 00	400	800	24 00	...	...
Brookfield,	315	2055	43 50	...	...	...	333	5900	101 66	...	315	2870	58 25	315	1735	51 00	...	...
Chelsea,	790	1345	112 40	...	...	...	300	900	31 40	...	387	1398	90 00	300	600	51 00	...	...
Corinth,	...	...	...	300	2670	42 34	...	...	...	...	...	...	...	...	...	...	...	...
Fairlee,	232	1105	24 00	100	500	6 00	453	2350	52 17	...	...	...	...	...	...	...	...	...
Newbury,	315	3600	33 00	...	...	...	550	6300	72 00	...	...	...	...	...	...	...	...	...
Orange,	600	1240	48 00	...	...	...	300	1525	37 00	...	300	465	22 00	300	900	41 70	...	...
Randolph,	...	...	...	427	7075	88 99	423	5200	63 24	...	225	2700	109 62	330	3250	46 40	...	...
Strafford,	345	1107	42 50	...	...	...	654	2764	115 00	...	...	...	...	...	...	...	...	...
Thetford,	100 00	3000	125 00	405	3435	16 83	470	10230	96 35	...	...	...	...	...	...	...	360	3815
Topsham,	...	...	...	454	5605	28 37	729	4688	67 76	...	...	...	...	...	...	...	...	24 13
Tunbridge,	319	1625	58 62	...	...	...	600	4375	213 66	...	...	...	...	...	...	...	...	...
Vershire,	100	250	...	100	500	...	195	500	40 00	...	123	790	28 60	422	1530	52 68	...	...
Washington,	400	1850	43 00	...	...	...	300	1450	37 50	...	300	1800	62 50	300	1500	49 50	...	...
West Fairlee,	300	900	32 00	...	...	...	400	1220	46 00	...	...	...	...	...	...	...	200	600
Williamstown,	512	5615	127 67	...	...	...	303	3800	92 87	...	284	3760	77 70	279	5035	48 28	...	48 30

List of Lands Sequestered in the County of Orleans, for Public, Pious, Charitable and other uses, 1882

PURPOSES OF SEQUESTRATION.

TOWNS.	For public, pious, charitable uses.			For religious uses.			For support of town schools.			For support county gram'r schools.			For University of Vermont.			For Middlebury College.		
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.
Albany,	442	2500	31 50	...	...	...	352	2300	43 00	355	2800	45 50	300	2000	36 00	4390	33960	516 00
Barton,	...	...	...	320	3044	40 00	319	3813	39 95	312	1516	53 83	313	2439	51 01	...	...	...
Brownington,	...	...	...	...	...	...	336	2150	45 00	357	1650	41 12	...	...	...	...	...	...
Charlestown,	236	1250	20 84	...	...	...	247	1240	19 88	478	2555	28 00	263	3350	35 68	...	...	...
Coventry,	...	...	...	684	3026	50 86	200	2500	33 00	340	4236	46 52	300	4084	44 00	...	...	...
Craftsbury,	...	...	...	318	3586	42 55	320	1900	40 00	...	...	...	355	1525	36 00	*460	1400	88 70
Derby,	...	...	...	...	...	...	595	6460	83 33	475	5175	71 69	465	5813	69 32	...	...	...
Glover,	320	3350	31 13	462	5610	54 38	320	2700	33 33	312	3100	43 29	400	3300	69 20	†80	200	none
Greensboro,	490	2628	39 00	...	...	...	260	1425	28 00	380	1900	32 51	300	2000	35 70	...	...	...
Holland,	283	1800	28 38	...	...	...	313	1750	26 73	309	1625	27 02	336	3100	55 25	...	...	...
Irasburgh,	440	4800	40 00	...	...	...	350	4300	43 20	220	3150	18 90	...	...	...	110	150	6 00
Jay,	...	...	...	...	...	...	2290	6400	123 40	...	...	...	6010	27750	628 66	†100	600	12 00
Lowell,	...	...	...	\$610	...	...	545	1700	30 00	545	500	12 00	610	...	...	...	...	...
Morgan,	...	...	...	354	...	27 70	354	...	28 70	197	...	22 00	321	...	37 34	...	...	...
Newport,	354	2832	35 60	...	...	...	379	3790	37 75	329	3132	35 39	1121	8967	123 00	...	...	...
Troy,	none	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Westfield,	514	2475	39 26	...	...	...	834	3110	56 98	360	2750	39 75	240	900	21 60	...	...	...
Westmore,	584	440	20 00	...	...	...	430	1725	25 82	292	1400	2 9 20	320	376	none	...	...	...

*For Craftsbury Academy. †For individual use. ‡For Northern Educational Union. §For first settled minister.

List of Lands Sequestered in the County of Rutland, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.																		
TOWNS.	For public, pious, charitable uses.			For religious uses.			For the support of town schools.			For support county Gram'r schools.			For University of Vermont.			Acres.	Appraisal.	Rents.
	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.	Acres.	Appraisal.	Rents.			
Benson,	.....	.....	.....	.....	.....	.....	252	5700	91 29	.....	3480	48 00	200	3000	35 00	.....	.....	.....
Brandon,	.....	.....	.....	60	1000	60 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Castleton,	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chittenden,	536	1160	32 00	.....	.....	.....	300	1100	36 00	.....	150	3 00	206	350	8 60	.....	.....	.....
Clarendon,	none	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Danby,	.....	.....	.....	.....	.....	.....	550	4950	129 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Fair Haven,	4	37700	.....	.....	.....	.....	163	7800	11 92	.....	200	6 00	100	200	6 00	.....	.....	.....
Hubbardton,	.....	.....	.....	30	240	13 33	300	2500	55 12	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ira,	30	600	50 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mendon,	160	1250	15 00	.....	.....	.....	242	1270	18 00	.....	4100	45 76	545	1800	13 00	.....	.....	.....
Middletown,	.....	.....	.....	5	2100	196 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mount Holly,	.....	.....	.....	.....	.....	.....	*524	4054	50 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mount Tabor,	.....	.....	.....	400	1400	16 00	1077	4268	50 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pawlet,	311	3477	104 25	.....	.....	.....	715	7036	234 88	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pittsfield,	.....	.....	.....	130	1200	130 00	90	650	7 50	.....	50	none	50	50	none	.....	500	none
Pittsford,	298	1085	56 35	.....	.....	.....	461	4075	79 46	.....	.....	.....	.....	.....	.....	.....	.....	.....
Poultney,	.....	.....	.....	152	4500	62 00	557	7445	133 30	.....	.....	.....	.....	.....	.....	.....	.....	.....
Rutland,	.....	.....	.....	415	1050	18 00	702	3750	80 44	.....	.....	.....	.....	.....	.....	.....	.....	.....
Sherburne,	324	600	10 00	324	300	20 00	648	2400	31 27	.....	.....	.....	.....	.....	.....	.....	.....	.....
Shrewsbury,	.....	.....	.....	.....	.....	.....	100	450	20 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Sudbury,	310	2575	75 00	.....	.....	.....	429	3160	94 34	.....	.....	.....	.....	.....	.....	.....	.....	.....
Tinmouth,	.....	.....	.....	80	800	16 00	196	1800	44 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wallingford,	.....	.....	.....	267	400	20 00	250	3600	25 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wells,	.....	.....	.....	.....	.....	.....	401	2800	\$68 50	.....	.....	.....	.....	.....	.....	.....	.....	.....
West Haven,	589	8120	161 00	231	2800	100 50	47	720	14 50	.....	3200	32 00	148	1400	14 00	.....	.....	.....

*To town of Wallingford. †For cemeteries and school districts. ‡For the poor. §\$18.26 paid to Poultney.

List of Lands Sequestered in the County of Washington, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.

TOWNS.	For public, pious, charitable uses.			For religious uses.			For the support of town schools.			For support county Gram'r schools.			For University of Vermont.			For Middlebury College.		
	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.	Aeres.	Appraisal.	Rents.
Barre,	454	10240	123 29	...	...	...	317	6960	72 36	190	2925	62 70	291	16370	48 90	...	...	...
Berlin,	...	...	...	300	4550	25 00	757	17500	93 23	...	...	...	...	...	...	...	...	...
Cabot,	...	...	...	544	4660	56 65	309	4925	48 95	334	3500	48 00	348	3650	47 07	...	...	...
Calais,	706	11300	90 10	...	...	...	349	4844	48 70	349	4800	49 50	349	5100	51 85	...	...	...
Duxbury,	692	4650	36 50	...	...	...	692	5610	37 68	...	...	...	...	...	...	...	...	...
East Montpelier,	640	12510	144 48	...	...	...	320	5610	69 46	200	3700	84 00	...	...	...	...	...	...
Fayston,	1650	9080	103 50	330	2625	26 00	550	4330	41 50	220	1250	12 00	550	875	24 00	...	...	...
Marshfield,	1680	3400	29 20	400	1680	14 60	1280	2320	13 80	...	...	...	...	...	...	...	...	...
Middlesex,	200	2050	21 00	...	...	...	919	10150	98 90	...	...	...	...	...	...	...	...	...
Montpelier,	...	...	...	...	...	...	...	...	...	160	4900	34 47	50	500	none	...	...	...
Moretown,	352	1500	19 50	...	...	...	991	3900	69 50	...	...	...	...	...	...	...	...	...
Northfield,	285	3420	38 16	...	...	...	847	12075	117 78	404	7350	60 85	837	5175	87 74	*209	4000	50 01
Plainfield,	284	4998	61 86	...	...	...	284	4998	61 85	...	...	...	...	...	...	...	...	...
Roxbury,	741	4455	62 93	...	...	...	334	2500	31 00	388	2700	30 00	336	3225	30 00	...	...	...
Waitsfield,	...	...	...	237	8230	43 23	266	5900	22 29	...	...	...	349	2450	25 00	...	...	...
Warren,	935	15360	77 81	...	...	...	...	...	...	...	...	...	496	3360	32 50	245	3275	33 03
Waterbury,	387	3840	28 50	...	...	...	914	9625	134 50	...	...	...	...	...	...	...	...	...
Woodbury,	500	3105	31 00	...	...	...	480	4123	36 22	...	...	...	...	...	...	...	...	...
Worcester,	300	1200	15 00	...	...	...	600	4242	50 00	300	2256	25 14	400	2000	23 00	...	...	...
																300	1480	18 00

*For Dartmouth College.

List of Lands Sequestered in the County of Windsor, for Public, Pious, Charitable and other uses, 1882.

PURPOSES OF SEQUESTRATION.

TOWNS.	For public, pious, charitable uses.			For religious uses.			For support of town schools.			For support county gram'r schools.			For University of Vermont.			Acre.	Appraisal.	Rents.
	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.	Acre.	Appraisal.	Rents.			
Andover,	250	1500	24 50	.....	.....	.....	405	1640	52 70	.....	.....	.....	.....	.....	.....	.....	.....	.....
Baltimore,	none	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Barnard,	300	1000	28 00	.....	.....	.....	600	2340	61 93	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bethel,	.....	.....	.....	489	2045	73 59	403	1895	57 79	383	1900	68 09	596	2680	80 19	.....	.....	.....
Bridgewater,	.....	.....	.....	.....	.....	.....	983	4000	146 48	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cavendish,	none	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chester,	339	1585	32 34	.....	.....	.....	621	2308	60 60	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hartford,	.....	.....	.....	342	2930	54 45	827	8050	108 00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hartland,	364	3250	108 98	.....	.....	.....	434	4355	100 75	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ludlow,	200	1400	22 00	.....	.....	.....	339	9116	63 30	.....	.....	.....	.....	.....	.....	.....	.....	.....
Norwich,	.....	.....	.....	358	2224	62 99	523	3666	99 76	.....	.....	.....	.....	.....	.....	.....	.....	.....
Plymouth,	380	2100	23 24	.....	.....	.....	824	5100	72 38	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pomfret,	320	3100	49 00	.....	.....	.....	745	5660	115 58	.....	.....	.....	.....	.....	.....	*174	2675	62 60
Reading,	275	1375	7 20	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Rochester,	600	3400	107 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Royalton,	.....	.....	.....	255	1975	66 36	440	2200	39 50	300	900	18 00	200	450	18 00	.....	.....	.....
Sharon,	40	200	9 00	250	800	46 00	330	2900	52 00	400	3050	75 20	330	3000	52 20	.....	.....	.....
Springfield,	341	3110	56 83	.....	.....	.....	382	2495	62 62	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stockbridge,	†400	.....	45 00	433	.....	59 25	666	5495	170 83	.....	.....	.....	.....	.....	.....	.....	.....	.....
Weathersfield,	130	1450	23 01	.....	.....	.....	830	.....	40 05	.....	.....	.....	.....	.....	.....	.....	.....	.....
Weston,	.....	.....	.....	215	1590	37 75	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
West Windsor,	none	.....	.....	.....	.....	.....	625	3950	49 90	.....	.....	.....	.....	.....	.....	.....	.....	.....
Windsor,	300	200	12 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Woodstock,	.....	.....	.....	378	1910	62 98	384	2578	63 98	.....	.....	.....	.....	.....	.....	.....	.....	.....

*For Royalton Academy.

†For the support of Foreign Missions.

VERMONT LEASE LANDS

STATE OF VERMONT.

OFFICE OF SECRETARY OF STATE, }
NORTHFIELD, November 27, A. D. 1882. }

I hereby certify that the foregoing is a true schedule of lands sequestered in the state of Vermont, as appears from the abstracts thereof, made agreeably to the provisions of section three hundred and thirteen of the Revised Laws, now on file in this office.

GEORGE NICHOLS,

Secretary of State.

APPENDIX I

MAP DEPICTING AREAS EMBRACED IN WENTWORTH GRANTS AND THOSE COVERED BY VERMONT GRANTS

The map following is not to be taken as correct in the exact location of the marginal lines between the Wentworth and Vermont areas. Within the limitations of the map form it is not practicable to adjust for the innumerable town line changes. Thus, there will be discrepancies between the town lines shown on this map of modern Vermont and the towns as represented by the charters.

However, such discrepancies are unimportant for the present purpose, which is only to give the reader the generalized picture of the situation. Wherever it was practicable, adjustments have been undertaken. An example is found in the case of Dover. The town as such was incorporated in 1810 and thus would seem to be a Vermont grant. However, it is composed entirely of a group of areas which were granted by Wentworth. (*Vermont State Papers, Index to the Papers of the Surveyor-General*, I, 63.) Brookline is seen to be half-marked. This town was incorporated in 1794 of land taken from Athens and Putney, later receiving more land from Newfane. (*Ibid.*, p. 42.) The two latter towns were Wentworth grants, and so the apparent portion of Brookline coming from those towns is represented in the Wentworth coverage.

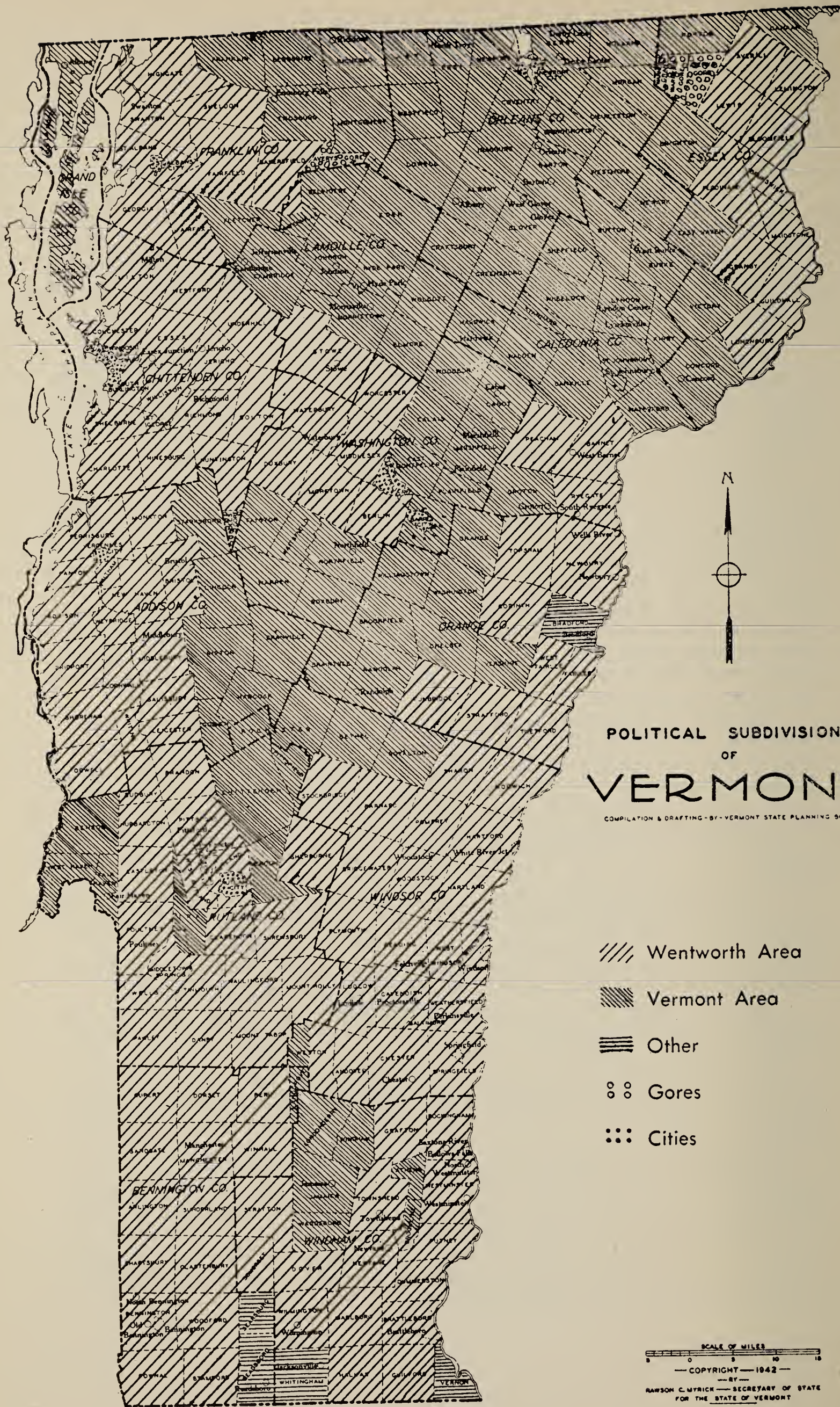
The case of Bakersfield requires special explanation. The town was incorporated by Vermont in 1792. Nevertheless, it has been shown in the Wentworth area. It was put together of several pieces, including two gores. But the major portion of the town derived from Fairfield and Smithfield (the latter disappearing in the process). Both of these were Wentworth towns and provided that pattern of land reservations; whereas, the Bakersfield incorporation did not include reservations. Thus any public lands which might lie in the area would be those granted by Wentworth.

Several towns are shown which fall into neither of the major patterns. Vernon was a part of the New Hampshire town of Hinsdale and possesses no charter. The others were entirely, or mostly, based on New York grants, and the later Vermont incorporations simply overlay those. Where original Vermont grants are found, they are for relatively small tracts and involve no public reservations.

The gores were all Vermont grants. Those shown are no more than the ones remaining at the present time. All of the other numerous gores have been absorbed into adjacent towns.

The cities are all statutory creations of the Vermont legislature. Their locations show from which major pattern they derive, with the exception of Montpelier. The latter includes a small section annexed from Berlin, but public lands were not involved.

A further precautionary word is in order respecting use of the map. There have been various changes of town names since the issuance of charters. The names on the map are, of course, the current versions. The work of distinguishing on the map form between the two groups of grants was accomplished by use of the charters as found in the respective volumes of the New Hampshire and Vermont *State Papers*, with a cross-check made to the data of subsequent events as compiled in the *Index to the Papers of the Surveyor-General*.



POLITICAL SUBDIVISIONS
OF
VERMONT

COMPILATION & DRAFTING - BY - VERMONT STATE PLANNING BOARD

- Wentworth Area
- Vermont Area
- Other
- Gores
- Cities

SCALE OF MILES

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RAWSON C. TRICK - SECRETARY OF STATE
FOR THE STATE OF VERMONT

INDEX

- Abbott v. Mills, 200
- Absentee ownership, 71, 72; effect of on lease lands, 62-63
- Acquiescence, 170-171; presumption of, 131, 169-170, with respect to modification of trust, 129; validating town charter, 157
- Adams v. Dunklee, 143
- Addison County Grammar School, administrative records of, 266 n. 3; nature of evolution of, 290-291
- Addison County v. Blackmer, 144
- Administration, of lease lands, 1, 19, 58; in unorganized areas, 15-16; lack of interest by trustees in, 76-78; lack of interest by state government in, 78; by private agencies, 80-85; effect on of law and customs of conveyancing, 87-90, 320; effect of Vermont character on, 92-97; character of, 114, 116; no effective supervision of, 184-185; in relation to town line changes, 189; court's notice of, 198; with state in position of administrator, 227; conditions of, 238, 319; by towns of religious lands a legitimate municipal function, 258; legislature's failure to provide for, 263; conditions of records of symptomatic of, 265; in relation to degree of centralization of, 265-266; difficulty of determining income from, 266; relation of to judicial activity, 309-310; results on of legislative efforts, 309-310; general evaluation of, 309-313; relation of state administration to, 310-313; inadequate manner of, 319; effect on of fragmentation of land parcels, 320; amateur nature of, 320; high cost of in relation to income, 320; effect on of method of dividing towns into severalty, 320; state irresponsibility respecting, 320-321; possibility of better use of forest lands, 327
- Towns, of lands pertaining to, by town officers, 78-80; town school land of in unorganized areas, legislation on, 256-257; land records of as kept by town clerks, 272; towns responsible for several groups of, 295-303; relation of to town treasurer's duties, 295; relation of to town clerk's duties, 295-296; report on by Vermont Educational Commission, 295-296; review of 1946 town reports respecting, 297-300; conditions of town reports respecting income from Gospel right, 299; evaluation of, 299, 303; income from, 301; effect of localism on, 301-302; nature of causes of litigation about, 302-303; attitude of towns toward, 303
- SPG, of lands of, 80-81, 266, 274-284; losses of lands, 274-275; not effective in early days, 275; effect on of technique of, 275; estimate of annual income from, 275; evaluation of, 277; early system of laid out by Society in London, 277; failure of Diocese to set up good system of after 1927, 277; record of early developments of, 277-278; early efforts by Vermont Episcopalians to secure, 278; system of powers of attorney for, 278; period of inaction, 279; report on in 1823, 279; difficulties with county agents, 280; description of system of, 280-282; modification in system of since 1927, 281; state agent for, 281; efforts to centralize data on, 282; problems of respecting timber lands, 283; in relation to distinctive aspects of legal status of, 283. *See also* Adverse possession; Diocese; Legislation; SPG
- Grammar schools, of lands pertaining to, 81-83, 284-295; modernized scheme for provided by legislature, 264; as affected by developments in secondary education, 284; original scheme for, 285; initial change in scheme for, 285; quality of questioned, 288; example of conditions of found in records of Orange County Grammar School, 288-289; evaluation of financial aspect of, 291; criticisms of, 292; disparities in re-

- ports to legislatures of 1878 and 1882, 293. *See also* Grammar school lands
- University of Vermont, of college lands of, 86-87, 87 n. 49, 259, 266-274; state administrators provided for in legislation of 1787, 245; condition of early records of, 267; records of characterized, 268; early effort of, 268; report of to legislature of 1804, 268, 270, 270 n. 13, 271; records of, 269; negligence of, 270-271; annual income from not ascertained, 271; losses of lands, 271 n. 16, 272, 274; conveyance of lands, 272; leases of lands, 272; respecting timber cutting, 272; in relation to record of litigation, 274. *See also* College lands; University of Vermont
- First settled minister, of lands of right of, 303-309; legislation for in unorganized areas, 162; distinctive character of, 303-304; provision for by legislature, 304; treatment of in town reports, 305. *See also* First settled minister land
- Gospel right, of lands of, first legislation for, 259; in unorganized areas, 260. *See also* Gospel lands
- Schools, local influence on, 301-302; types of school districts, 302. *See also* Town schools; Town school lands
- Adverse possession, in relation to lease lands, 109, 113-114, 121 n. 97, 125, 151-152, 157-163, 204; claim of, 130; effect of on conveyances, 146; attitude of court to losses of lease lands by, 158; attitude of court to other lands, 158; as to SPG lots, 158, 161-162, 222, 275, 275 n. 27; responsibility of lessee to get in, 161; legislation on, 161-162, 228-231, 364-365; as to first settled minister right, 162; immunity from, 162; alienation by prevented, 163; recommendation regarding, 326. *See also* Alienation; Statutes of limitations
- Aldrich v. Griffith, 187 n. 35
- Alienation, of lease lands, 126; subject to lessee's rights, 124; New Hampshire and Vermont doctrines contrasted, 137, 138; permitted, 151-152; of first settled minister lot, 152-153, 303-304; restriction against, 155; protection from by adverse possession, 163. *See also* Conveyancing; Trusts
- Allen, Ethan, 22, 38, 39, 64
- Allen, Ira, 50, 64, 67, 68, 70, 76, 278
- Andrews, Edward D., 3, 3 n. 5, 284, 284 n. 62, 287, 287 n. 75, 291 n. 91
- Areas, unorganized, *see* Unorganized areas; Gores
- Arms v. Burt, 106, 107, 109, 397
- Assessment, Quadrennial, 79; of taxes, law of, 195
- Assessments, Quadrennial Abstract of, 5, 60
- Assessors, *see* Listers
- Attempted conveyance in fee, 116-118; void, 124
- Attorney General, opinion of on tax exemption, 322-324
- Bailey, Francis L., 91 n. 54
- Baptist Society in Wilton v. Town of Wilton, 18 n. 39, 74 n. 31, 136-137, 259 n. 121
- Barre, Town of v. School District, 197
- Barrows, Max, 85
- Beach v. Haynes, 200
- Bean, Reverend Samuel, 305 n. 130
- Bennett v. Bennett, 143
- Bennington v. Park, 135, 185 n. 26
- Benton, R. C., 17 n. 37
- Betterments Acts, 69 n. 21, 73 n. 30, 231-232, 365. *See also* Legislation
- Bogart, E. L., 288 n. 81, 289
- Boothe v. Coventry, 171
- Boundary lines, New Hampshire-Vermont, 5 n. 6, 21; New Hampshire-Massachusetts, 22, 23, 24, 24 n. 9, 25, 33; New York-Connecticut, 25; New York-Massachusetts, 25; New York-Connecticut-Massachusetts, 25, 33; New York-New Hampshire, 25, 33, 36; agreement between New York and Vermont, 45, 53; town, *see* Town lines; county, *see* County, boundary lines
- Boyce v. Sumner, 194, 201-202, 210
- Bragg v. Newton, 144
- Brandon, Town of v. Harvey, 145
- Brattleboro Retreat v. Town of Brattleboro, 211
- Brown v. Derway, 122 n. 100, 125, 163
- Brown v. Edson, 156, 166-167
- Bryan, Stewart, 85
- Burlington, City of v. Mayor of City of Burlington, 144
- Burr v. Smith, 202
- Bush, George G., 13, 13 n. 20
- Bush v. Whitney, 106, 107, 109, 127
- Butterfield, Professor A. D., 69 n. 20, 86, 267, 270, 270 n. 12

- Caledonia County Grammar School v. Burt, 108, 111 n. 55, 148-149, 151 n. 226, 181-182, 287, 322
- Caledonia County Grammar School v. Kent (1910), 113-114, 119 n. 90, 121 n. 97, 128, 157-158, 163, 168, 184, 196, 198, 273, 275
- Caledonia County Grammar School v. Kent (1912), 113, 116-117, 119 n. 90, 121 n. 97, 128, 144-145, 168, 196, 198, 273, 275
- Capen's Admr. v. Sheldon, 130-131, 197, 306
- Charity, protection of and modification of trust for, 129; public, characterized, 132; law of charitable uses explained, 202-203. *See also* Public, pious and charitable use; Trusts
- Charleston, Town of v. Allen, 147
- Charters, judicial construction of, 146-155, 186. *See also* Town, charters
- Chipman, Daniel, 102, 102 n. 6
- Chipman, Nathaniel, 101 n. 4, 140, 141, 142, 156, 156 n. 243, 179
- Chittenden, Thomas, 50, 50 n. 81
- Church lands, 62, 91; municipal corporations as trustee for, 132, 132 n. 148, 140, 198. *See also* First settled minister land; Gospel lands; Religious Church of England, 74, 217-218. *See also* Diocese; SPG
- Churchill v. Capen, 112, 189 n. 40
- Cities, 16, 407; as units of government in Vermont, 57-58; officers of, legislation regarding, 238
- Clark v. City of Burlington, 210, 328, 328 n. 43
- Clarke, L. D., 3, 3 n. 4, 13
- Clarke v. Mylkes, 144
- Clement, John C., 86
- Clement v. Graham, 140
- Clerk, town, 83, 86, 87; legislation regarding, 237-238; in relation to land records, 272; regarding lease land administration, 295, 296. *See also* Town
- Coffrin, C. M., 16
- Colchester v. Hill, 283
- Colden, Lt. Gov. Cadwalader, 22, 32, 34, 36, 37, 38 n. 43, 39, 40, 41, 42 n. 54, 45, 157
- College lands, 3, 3 n. 3, 56, 56 n. 92, 72, 72 n. 29, 75, 91, 132, 148-149, 185, 200, 242; administration of, 86-87, by University of Vermont, 266-274; respecting durable leases, 108, 119-120; loss of, 127, 165-166; disposition of, 128; legislation regarding, 243-245; attitude of court regarding, 274; judicial construction of charters, regarding, 286 n. 69. *See also* Administration; Legislation; University of Vermont
- Collins, Edward D., 40 n. 50
- Colton and More v. City of Montpelier, 211
- Commission on Forest Taxation, report of, 11, 11 n. 12, 18 n. 38, 271, 275, 299 n. 107, 316 n. 2, n. 3, 317, 317 n. 8
- Commission, Vermont Educational, 302 n. 119, 327; report of, 288 n. 79, n. 80, 293-294, 301, 303, 327, regarding conditions of town administration, 295-296; experience of with town officers and town records, 297
- Commissioner of Education, 91 n. 54, 302 n. 119
- Commissioner of Taxes, 5, 16, 16 n. 34, 58, 59-60, 75 n. 34, 239 n. 35, 310; report of to legislature on tax exemptions, 242; information of on lease lands, 313
- Common law, attitude of court toward, 101 n. 3, 120; relation to of Vermont legal doctrine, 138-139; influence of in Vermont, 138-142; adoption of by legislature, 139; effectiveness of in Vermont, 182; in relation to Church of England, 217-218; effect of on glebe, 218; legislation regarding, 364
- Commuted rent, conveyance of lease lands by, 116-118, 125; attitude of court toward, 114-115; voided, 126, 126 n. 115; by SPG, 275; contemplated by Diocese, 283; mostly used with respect to forest lands, 317. *See also* Conveyances; Trustees
- Conant, Edward, 289, 291 n. 89, 309
- Condemnation, *see* Eminent domain
- Confiscation, of glebe, 56, 216-220; of SPG land, 56, 120-121, 121 n. 95; legislative effort at, 245. *See also* Glebe; SPG
- Congregational Society of Newport v. Walker, 108, 128 n. 127, 305
- Congregational Society of Poultney v. Ashley, *et al.*, 193, 209, 212
- Connecticut, boundary with New York, 25; land grants, 26
- Construction, judicial, of instruments, 101 n. 3, 121, 141-155; of charters, 120 n. 94, 121, 127, 146-155, 186, 286 n. 69; of statutes, 120, 121, 122, 126, 144-146, 159, 173, 186, of statute of 1797 regarding due settlement of minister, 308, of statutes on taxation, 328; of deeds, 143-144; of wills, 144; of tax exemption privilege, 212

- Contract, obligation of, in relation to lease lands, 108, 109, 111, 113-114, 125, 180-195, 325; in respect to tax exemption, 187; attitude of court toward duties of local officers respecting, 189-195; regarding effect of taxation, 205-206
- Contracts, durable leases enforceable as, 108
- Conveyance, of lease lands, 123; of town school lot, 108, by University of Vermont, 272; attempted, 115, 116-118; prevented, 121, 124, 131, 165; of first settled minister's lot, 127, 128-129, 130-131; provided for in legislation of 1935 and 1937, 131, 132, 227 n. 3, 243-244; provided for by University of Vermont in legislation of 1925, 227, 243-244. *See also* Commuted rent; Trustees; Trusts
- Conveyances, forms of contrasted, 119-120; when property held by adverse possession, 146; legislation of 1807 regarding, 163; right of lessor to sell only reversionary interest, 184; by commuted rent of SPG land, 275, 283
- Conveyancing, 126-135; law of related to administration of lease lands, 87-90; attitude of court toward, 101 n. 3; New Hampshire doctrine regarding public lands contrasted, 126; legislative provisions for recording, 226; of encumbered property prohibited, 226-227; legislation on, 226-228, 363; customs of, influence of on administration of lease lands, 320. *See also* Alienation; Trusts
- Coolidge, Guy O., 26 n. 14
- Cooney v. Hayes, 118 n. 85
- Corinth v. Newbury, 14 n. 27, 149, 155
- Cornwall, Ellsworth B., 88
- Counties, as units of government in Vermont, 57
- County grammar schools, *see* Grammar schools
- County, boundary lines, legislation respecting, 225, 236, 375; officers, legislation respecting, 238; treasurer, regarding income from town school land, 256, regarding lease lands, legislation on, 257 n. 110, 260, duties of, 262, 304, 311
- Court, U. S. Supreme, attitude of toward implied tax exemption, 325
- Court, Vermont Supreme, attitude of toward, problems of tax exemption, 101, 193, 205, implied tax exemption, 323; law of conveyancing, 101 n. 3; common law, 101 n. 3, 120; durable leases, 105, 115-116, 125-126; commuted rent conveyances of lease lands, 114-115; trusts, 117-118, 195-196, 287; adverse possession, 146, 158; New Hampshire-New York controversy, 155-157; easements, 158-159; acquiescence, 170-171; irregularities in proprietors' doings, 171-172; problems of public policy, 172; eminent domain, 172-173; ejectment actions involving lease lands, 179; obligation of contract, 180, 181-187, involving local officers, 189-195; power of the legislature, 185-187; tax legislation, 187, 323, 324, 328; town line problems, 188; listers, 193-195; college right, 274; grammar school right, 295; first settled minister right, 304, 304 n. 124, regarding due settlement of minister, 308; condition of early records of, 101-103; inadequacy of early records of, 106; explanation of doctrine on durable leases by, 110; notice of durable leases by, 122; refusal of to accept conveyance of lease lands in fee, 165; rulings on SPG right not explicit, 283; notice by of faults of legislature, 319 n. 12. *See also* Judicial
- Currier v. Rosebrooks and Town of Brighton, 110
- Cutler Co. v. Barber, 143-144
- Daggett v. Mendon, 130, 306
- Dartmouth College, 75, 75 n. 34, 278, 406; authorization of sale by of holdings in Town of Wheelock, 227; legislation regarding, 243
- Dartmouth College v. Woodward, 133, 134, 182, 183, 184, 186, 220 n. 181
- Davis v. Moyles, 61 n. 5, 157
- Davis v. Union Meeting House Society, 198
- Dawson's Lessee v. Godfrey, 220 n. 181
- Deeds, judicial construction of, 143-144
- Derrick v. Luddy, 112
- Dieter v. Scott, 118 n. 85
- Diocese, Episcopal, of Vermont, 77-78, 80, 81, 83 n. 45, 84, 320; property holding status of regularized by legislature, 246; administration of SPG lands, 266; largest holder of lease lands, 274; disposition by trustees of income from lease lands, 275-276; SPG right transferred to in 1927, 277; failure of to set up sound land administration after 1927, 277. *See also* Administration; Glebe; SPG

- Distribution of lease land avails, effect on of town line changes, 149-151
- Doolittle v. Linsley, 159
- D'Orazio v. Pashby, 171
- Doubleday v. Town of Stockbridge, 125, 195
- Dow v. Hinesburg, 18 n. 39, 308
- Downer's Estate, *In re*, 196, 201-202, 211, 212
- Duane, James, 22, 31, 40, 41, 44 n. 60
- Dummer, Fort, 23, 25, 28
- Durable leases, 105-126; court's attitude toward consistent, 105; Vermont doctrine on unique, 105-106, 120-121; perpetual in term, 105 n. 12; contrasted with other conveyances, 105 n. 14, 118; conveyance in fee voided as violating doctrine of, 106, 107; doctrine of distinguished from common law position, 106-107; basis of Vermont doctrine of, 107; distinction in Vermont doctrine, 107; in relation to college land, 108, 118-122; in relation to grammar school land, 108, 111, 113; in relation to SPG land, 109, 120-121; court's explanation of doctrine of, 110; assignability of, 112, 118; in relation to town school land, 112; attitude of court toward, 116-117, 125-126; requirements of, 116-117; in relation to Gospel land, 118; revocation of, 118; notice of by court, 122; upheld by court, 124; contractual rights involved in, 125, 183; New Hampshire and Vermont doctrines on public lands contrasted, 138; prevent claim of prescriptive title, 168; in relation to concept of public use, 199; in relation to tax exemption, 204; noticed by U.S. court, 223; relation of legislation to doctrine of, 226; not applicable to first settled minister land, 304; as affected by lumbering practices on forest lands, 317; comparison of in Georgia and Vermont, 325; viewpoint of Judge Moulton on, 397-399; only one judicial dissent on, 397 n. 1; purpose of, 398-399; effects of, 406. *See also* Conveyancing; Trustees
- Easements, court's attitude toward, 158-159; in relation to statutes of limitations, 158-159; problems of regarded as similar to matters of adverse possession, 160; in relation to land devoted to public use, 174-175, 175 n. 320, 200; occurring in violation of doctrine of protection of public lands, 175, 175 n. 320; legislation on, 232-233, 365
- Education, Department of, 5; State Board of, 85, 86; Commissioner of, 91 n. 54, 302 n. 119; State Superintendent of, report of (1875), 301, report of (1876) on income from grammar school lands, 291 n. 88, report of (1880) on lease lands, 289, 293 n. 96, report of (1888) on lease lands, 294
- Educational, Vermont Commission, 302 n. 119, 327; report of, 288 n. 79, n. 80, 293-294, 301, 303; on conditions of town administration, 295-296; experience of with town officers and town records, 297
- Ejectment, action of, 87 n. 49, 96, 108, 111, 114, 128, 147, 152-153, 164, 165, 169, 179-180, 217, 221, 284; suits of 1770, 21, 25 n. 13, 43-44; involving first settled minister lot, 108-109; Vermont law of, 179; lease lands heavily involved in, 179; actions of for SPG lands, 180; legislation on, 235, 368; trustees of lease lands empowered to recover by, 235
- Eminent domain, power of, 172-177; no Vermont court reports of cases on involving lease lands, 172; law of respecting land already devoted to public use, 173, 199; in relation to easements, 174-175; legislation on, 234-235, 368; in relation to conveyance of lease lands, 322. *See also* Federal government
- Episcopal Church in Vermont, always received benefit of SPG lands, 277. *See also* Diocese; SPG
- Episcopalians, early effort of to secure SPG lands, 278
- Equivalent lands, 26, 28-29
- Federal government, in relation to lease lands, 58, 91. *See also* Forest
- Felton v. Cheltis, 171
- First National Bank of Boston v. Harvey, 145
- First settled minister land, 2, 3, 18 n. 39, 63, 72, 74, 77, 128 n. 127, 130-131, 166-167, 190, 191, 192, 197, 406; ejectment action for, 108-109, 147; unsettled, 110; conveyance of, 127, 128-129, 130-131; exclusion from of missionary and apostolic ministers,

- 147; disposal of, 148, 153-154; alienation of, 152-153, 303-304, 303 n. 123; in relation to adverse possession, 162; relation of selectmen to, 189; in New Hampshire, 219; administration of, 303-309; administrative distinctions of, 303-304; quantity of reserved important, 304; not subject to durable leasing, 304; reasons for present existence of, 304; as inducement to settlement, 305; treatment of in town reports, 305; variety of effects of, 305; in relation to tax exemption, 305 n. 127; record of litigation of, 306; issues at law respecting, 306-309; legal problem of ministerial settlement, 307, 308-309; legal problem of definition of proper religious group, 307, 308-309; effect on of demographic conditions in Vermont, 307-308; judicial construction of statute of 1797 regarding due settlement, 308; requirements for due settlement, 308-309
- Legislation on, 260, 262-263, 395-396; regarding administration of in unorganized areas. 162; distinctive provisions of, 262; regarding limits of term of leases of, 262; providing for tax exemption, 262; providing for fee in land to go to minister, 262
- Fletcher v. Peck, 133, 182, 186
- Forest, industries, 55-56; lands, timber cutting on, 114, 119, 130, 159, 166-167, 192, 317, on SPG lots, 121 n. 97, 283, on college lots, 272, in relation to commuted rent conveyances, 317, lease land system never successful for, 317, administration of, 319, 327; Vermont State, 176; federal, 176-177, 234; Commission on Taxation, report of, 217, 275, 299 n. 107, 316 n. 2, n. 3, 317, 317 n. 8; complexity of law of taxation of in Vermont, 317
- Forester, State, 69 n. 20, 313. *See also* State Forester
- Forestry service, State, 58, 94-95
- Franklin County Grammar School v. Bailey, 111, 111 n. 59, 184, 291
- French seigneuries, 26, 26 n. 14, 31 n. 24
- Fuller v. Gould, 193
- Gardner v. Rogers, 190, 305, 308
- Gilkey v. Shepard, 143, 196
- Glebe, 2, 10, 10 n. 9, 11, 11 n. 12, 63, 77, 106, 107, 190, 327; lack of information on, vii; terminology, vii, 3, 91 n. 54; definition of, 10 n. 10; confiscation of, 19, 56, 216-220, 245; exchanged, 127; in relation to duties of selectmen, 189; legal nature of explained, 217-218; right to of Episcopalians, 218; disposition of, 218-219; legislation on, 260-262, 263, 395; in town reports, 299; example of use of term, 322 n. 15; explanation of term, 405
- Gore v. Blanchard, 200
- Gores, 2, 15, 15 n. 31, 68, 407; governmental administration in, 15-16; legislation on, 236, 375-376; in relation to reservations of public lands, 362. *See also* Unorganized areas
- Gorham v. Daniels, 101 n. 3, 140
- Gospel lands, 3, 18 n. 39, 72, 77, 123, 132, 266; in relation to durable leases, 118; in New Hampshire, 136-137; in relation to duties of selectmen, 189; taxation of, 205; legislation on, 258-260, 394-395, regarding settlement of minister, 258, other terms used in, 258 n. 115, for administration of, 259, regarding distribution of avails, 259, on entitlement to avails, 259-260, for administration of in unorganized areas, 260; in early period clearly a quasi-public function, 258-259; some assumed to be lost, 259; in town reports, 299; distribution of avails of, 308 n. 140, 309. *See also* Municipal corporations; Religious
- Grammar school lands, 3, 56, 56 n. 92, 72, 81-83, 109-110, 111, 111 n. 55, 113-118, 148-149, 162, 163, 181-182, 184, 185, 215-216, 253 n. 98, 258 n. 113; in relation to durable leases, 108, 111; distribution of, 148-149; duties of selectmen respecting, 189, 252; legislation on, 227, respecting Lamoille County, 227, respecting Orange County, 227; granted by legislature to common school, 253; modern administration of provided for, 254; administration of, 284-295, in relation to developments in secondary education, 284, original scheme for, 285, initial change in scheme for, 285, quality of questioned, 288, exemplified in records of Orange County Grammar School, 288-289, evaluation of financial administration of, 291, criticisms of, 292; effects of grants of,

- 284; first disposition of by legislature, 285; forms of granting clauses in charters, 285; legislative confusion respecting intent of charter clauses, 286; vested right in schools, 287; lacking in three counties, 287 n. 77; methods of legislature in granting, 287; as motivation for organization of schools, 287, 292; to go to benefit of high schools when grammar schools disappear, 289; use of by common schools considered perversion of purpose of, 289-290; diverted upward to college level use, 290; peculiar development in Addison and Washington County schools, 290-291; evaluation of income from in relation to early level of educational expenditures, 291; report in 1876 of State Superintendent of Education on income from, 291 n. 88; grants of in relation to nomenclature of schools, 291 n. 90; principal causes of litigation over, 294-295; court's attitude toward, 295
- Grammar schools, 77-78, 91 n. 55, 96-97, 240, 273 n. 20, 319 n. 11; Washington County, 59-60 n. 1, 64 n. 9, 82 n. 44, 85, 88; Orange County, 85, 248; in relation to durable leases, 113; required to reserve annual rent in leases, 121; legislation on, 246-254, 386-393; legislative failure to develop policy on, 247; legislative record for Orleans County reviewed, 248-252; period of importance of ended, 254; administrative records of Addison County, 266 n. 3; history of as educational institution, 284-285; characteristics of trustees of, 288; disappearance of, 289; sources of income of in relation to lease lands, 291-292
- Grand Lodge of Masons v. City of Burlington, 213-214
- Grand Trunk Railway Co. v. Dyer, 69 n. 21
- Grants, land, *see* Land grants
- Green Mountain National Forest, taking of lease lands for, 176-177. *See also* Eminent domain; Federal government; Forest
- Hardwick, Town of v. Wolcott, 211
- Harvey, Erwin M., 59-60, 59 n. 1, 64, 75 n. 34, 80 n. 41, n. 42, 88, 91 n. 54, 310
- Heaton's Estate, *In re*, 141-142
- Hemenway, Abby M., 15, 15 n. 29
- Herrick v. Randolph, 182-183, 187, 193, 204, 205-209, 238, 240, 322, 323, 323 n. 26, n. 27, 324, 325
- Hicks, Reverend John A., 281, 281 n. 49, 282 n. 50
- Highway Department, State of Vermont, 58
- Holton v. Hassam, 118, 193
- Huden, John C., 289
- Huestis v. Manley, 144, 144 n. 196
- Hull v. Fuller, 69 n. 21, 146, 170
- Huntley v. Houghton, 113
- Hyde, George, 305 n. 130
- Inalienability of lease lands, 123, 135. *See also* Conveyancing; Trustees
- Information, lack of on lease lands, 7-9; in town offices, 5, 6; in state offices, 5
- Jacob v. Smead, 156
- Jamaica v. Hart, 111, 111 n. 57, 183, 186 n. 31, 193
- Johnson v. Barden, 141
- Johnson v. Bayley, 156
- Jones, Matt B., 12, 14, 16, 17, 17 n. 37, 22, 23, 26, 27, 35, 39, 40 n. 49, 42 n. 52, n. 53, 43 n. 56, 44 n. 60, 46 n. 66, n. 68, 47 n. 69, 65, 65 n. 10, n. 11
- Jones v. Vermont Asbestos Corp., *et al.*, 122-124, 126, 127, 131-134, 137 n. 162, 155, 155 n. 239, 184, 189, 189 n. 40, 193, 196, 197, 198, 200, 204, 258 n. 116, 322, 326
- Judicial construction, of instruments, 101 n. 3, 121, 141-155; of legislation, 120, 121, 122, 126, 144-146, 159, 173, 186; of charters, 120 n. 94, 121, 127, 146-155, 186, 286 n. 69; of deeds, 143-144; of wills, 144; of tax exemption privilege, 212; relation of doctrines to legislation on lease lands, 257-258; of statute of 1797 regarding due settlement of minister, 308; activities, relation of to administration of lease lands, 309-310. *See also* Court Jurisdiction, problem of between New Hampshire and New York, 156
- Keith v. Day, 87 n. 49, 108, 127-128
- Lamoille County grammar school lands, legislation on, 227
- Lampson v. New Haven, 107, 109, 397
- Land grants, New Hampshire, 10, 11 n. 12, 13-14, 14 n. 26, 29, 29 n. 20, n. 21, 31, 33, 33 n. 28, 34, 35, 35 n. 34, 36, 38, 41-42, 44, 44 n. 60, 45, 60-61,

62, 64, 65, 67, 70, 74, 95, 176 n. 324, 185 n. 26, 208, 216, 220, 233, 287 n. 77, 299, 304, 319 n. 11, 361, 406, 407, phases of, 32-36, validated, 156; New York, 14, 14 n. 28, 15, 29-30, 33, 34, 44, 45, 61 n. 5, 64-65, 67, 71, 157, confirmations, 14, 61, phases of, 37-43; Vermont, 14, 14 n. 28, 15, 50-51, 53, 67, 68, 70-71, 72, re-grants, 50; Massachusetts, 15, 23, 26, 29, 29 n. 21, 38; to Duke of York in 1664, 24, 37; Connecticut, 26; Equivalent lands, 26, 28-29; French seigneuries, 26, 26 n. 14, 31 n. 24; major operations respecting, 26-27; of Lydius, 30-31, 43-44; conflicting, 61, 61 n. 5; redesignations, 61; re-grants, 61; office of University of Vermont, 86-87; speculation, *see* Speculation. *See also* Boundary lines; Order in council

Lease lands, 3, 65, 71, 72, 73, 74, 75, 76; information on, lack of, vii, 7-9, 21, in state offices, 5, in town offices, 5, 6, by Commissioner of Taxes, 313, by State Forester, 313; terminological problems of, vii, 10, 11, 11 n. 12, 12, 321, 322 n. 15; origin of, 1, 2; purpose of, 1, 18-19, 18 n. 39, 315; classification of, 1; in Wentworth towns, 2, 60-61; in Vermont towns, 2; extent (acreage) of, 12, 17-18, 17 n. 37, 18 n. 38, 70; as political institution, 56; legislation on, 56, 363-396; federal government in relation to, 58; as affected by early absentee ownership, 62-63; disposal of by legislature, 121; inalienability of, 123, 135; power over of legislature, 127; in relation to doctrine of presumptions, 131, 163; no longer public lands after conveyance under 1935 legislation, 134; in relation to adverse possession, 151-152, 157-163, 326; in relation to statutes of limitations, 162, 200, 228-231; in relation to problems of public policy, 166, 172; affected by rule of acquiescence, 171; effect on of proprietors' doings, 172; in relation to power of eminent domain, 172-173, 235; taking of, for state forest, 176, for Green Mountain National Forest, 176-177; subject to taking under police power, 177; prominent in actions of ejectment, 179; fertile source of litigation, 180; as legislative grants, 185; legislature unable to handle problems of

arising from changes in town lines, 186; held to be non-governmental town property, 186, 189; as vested right, 189, 198; as affected by Vermont law of assessment of taxes, 195; as land devoted to public, pious and charitable use, 199, 201; taxation of, as problem of public policy, 206 n. 117, possibility of, 209, local, 323; New Hampshire doctrine of reviewed by United States court, 219; transfer of in glebe confiscation, 219-220; exempted by legislature from allotment of land for highways, 232-233; relation of legislation to judicial doctrines in respect to rigidity of system of, 257-258; income from, difficulty of determining, 266, by University of Vermont not ascertained, 271, in relation to sources of for grammar schools, 291-292, for towns, 301; report on, of SPG lots in 1823, 279, to legislatures of 1878 and 1882, 292-293, by State Superintendent of Education in 1880, 293 n. 96, in 1875, 301; review of town reports for 1946 regarding, 297-300; significance for of poor condition of town reports, 298; causes of litigation of town administered lots, 302-303; relation of legislative efforts to administrative results for, 309-310; system in Vermont as affected by locally accepted practices and doctrines, 315; New Hampshire and Vermont results with public lands contrasted, 315; system of characterized by inflexibility, 315; system of, embodies serious defects, 315, now considered disadvantageous for public, 316, never well handled in case of forest lands, 317, resulted in inequities, 318-319, still a public problem despite legislation of 1937, 321; variants in reservation of in town charters, 361-362; reservations of in regard to gores, 362; summary statement about, 405-406

Administration of, 1, 19, 58; lack of interest, of trustees in, 76-78, of state government in, 78; by town officers, 78-80; by private agencies, 80-85; by University of Vermont, 87 n. 49, 266-274; effect on of character of Vermonters, 92-97; not effectively supervised, 184-185; noticed by court, 198; by state, 227; degrees of centralization of, 265;

- condition of administrative records epitomizing, 265; SPG land, 266; by towns, 295-303, several classes of, 295, evaluation of, 299, 303; relation to of town clerks, 295, 296; relation to of town treasurers, 295; in relation to judicial activities, 309-313; general evaluation of, 309-313; relation of state administration to, 310-313; effect on of method of dividing towns into severalty, 320; effect on of customs of conveyancing, 320
- Losses of, 18, 63-64, 70, 90-91, 93, 118, 125, 127, 167, 299 n. 107; by presumption, 151-152, 165; by adverse possession, 158, 161-162; by eminent domain, 172; possibility of, 238; assumed respecting some Gospel rights, 259; by University of Vermont, 271 n. 16, 272, 274; by SPG, 275-276
- Trusts, characteristics as, 121, 121 n. 97, 132, 151; court's ruling on, 196; public, 196; inflexible, 197; with municipal corporation as trustee, 197, 198
- Conveyance of, 123, 126; subject to lessee's rights, 124; under legislation of 1935 and 1937, 131, 227 n. 3; in fee authorized by 1935 legislation, 132; permitted, 151-152; not acceptable to court, 165; cannot disturb lessee, 184; by University of Vermont, 272, authorized, by legislation of 1925, 227, by legislation of 1935, 243-244; of SPG land by commuted rent, 275, 283; always permitted for first settled minister land, 303-304; no incentive for under 1937 legislation, 321; in relation to eminent domain proceedings, 322
- Tax exemption of, 125, 134; only one case on in Vermont Supreme Court, 182-183; court cases in which touched upon, 204; important, 204; as affecting improvements on, 205; purpose of, 209; by abatement, 239 n. 35; consistent in legislative record, 240-241; perpetual by legislative grant, 253; legislation on, 262 n. 137, legislative query about in 1945 session, 321
- Leases, durable, *see* Durable leases
- Legislation, 56, 363-396; betterments acts, 69 n. 21, 73 n. 30, 231-232, 365; to prevent land speculation, 145-146; protecting lease lands from adverse possession, 158, 161-162, 229; respecting Green Mountain National Forest, 176 n. 323; on action of ejectment, 179, 235, 368; to redistribute lease lands, voided, 184; judicial construction of, 186; on taxes, attitude of court toward, 187; on town line changes, 187-188, 225, 235-236, 368-375; on distribution of religious lease land avails, 190-191; on assessment of taxes against owner or possessor, history of, 195, as affecting lease lands, 195; regarding charitable uses, explained, 202-203; character of early, respecting bill drafting, 207; listers' laws, character of, 208; on glebes, 218, 260-262, 263, 395, 1805 confiscation of, 219, 245; titles to acts not dependable, 225; indices of not dependable, 225; on county lines, 225, 236, 375; on leases, no generalization possible, 226; relation of to durable leases, 226; on conflicting land claims resulting from New Hampshire-New York controversy, 228; on easements, 232-233, 365; exempting lease lands from allotment for highways, 232-233; regarding proprietors' doings, 233-234, 365-368; validating early defects in affairs of organized towns, 234; intervening to protect public rights, 234; validating illegal transactions, 234; on land problems, nature of early, 234; on eminent domain, as affecting lease lands, 234, 235, 368; on gores (unorganized areas), 236-237, 375-376, for education of children living in, 256-257, for administration of lease lands in, 256-257; on duties of selectmen, 237; on town officers, 237-238, 376-378; on duties of town clerks, 237-238; on county officers, 238; on city officers, 238; on schools, 238, 254-258; on tax collecting, 238; on taxes, early, relation of to lease lands, 238; on state taxes, 238-240, 378-380; special, 240; on Dartmouth College, 243; on Middlebury College, 243; on Norwich University, 243; on college right lands, 243-245; for general establishment of public high schools, 253-254; on duties of county treasurer regarding lease lands, 257 n. 110, 260; relation of judicial doctrines to, regarding rigidity of lease land system, 257-258; on town school right lands, 260, 393-394, regarding

distribution of avails from, 238, 257-258; on legal recognition of voluntary religious associations, 259; on incorporation of church groups, 260; early changes in, of questionable validity, 263; on adoption of common law, 364; on New Hampshire-New York controversy, 364; on county taxes, 380-382. *See also* Legislature

Conveyancing, regarding, 226-228, 363; effect of on administration of lease lands, 87-90; court's attitude toward, 101 n. 3; 1935 acts on lease lands, 123, 131-133, 227, 227 n. 3, 322 n. 19, effect of on public status of lease lands, 134, validated by court, 184; 1937 act on lease lands, 124 n. 104, 131, 227, 227 n. 3, 322 n. 19, regarding eminent domain proceedings, 172, not widely useful, 184, 321, in relation to law of trusts, 196, in relation to taxation, 326; act of 1807, 163; act prohibiting, of encumbered property, 226-227; act of 1925 authorizing University of Vermont to convey lease lands, 227; act authorizing sale of Dartmouth College holdings in Town of Wheelock, 227

Statutes of limitations, regarding, 228-231, 364-365; policy of, 226, first 229, review of, 229, exemption of lease lands from, 230; final act in 1854 as affecting lease lands, 231

Tax exemption, regarding, 240-243, 262 n. 137, 382-384; of lease lands in listers' laws, 205, 207; perpetual, 206-207, 253; early, 207-208; course of policy on, 212-213, 226; of lease lands by abatement, 239 n. 35; trend away from, 242; query about in 1945 session of legislature, 321

University of Vermont, affecting, 243-245, 384-385; 1925 and 1935 acts authorizing sale by of lease lands, 243-244; making change in organization of, 244; act of 1937 in relation to, 244

SPG right, regarding, 245-246, 261, 385; on confiscation of, 221, 245; subjecting to adverse possession and statutes of limitations, 245; regularizing property-holding status of Episcopal diocese, 246

Grammar schools, regarding, 246-254, 386-393; in Orange County, 248; granting land to use of common school, 253; providing for modern-

ized scheme of administration of lands, 254; providing that lands shall go to benefit of high schools when grammar schools are discontinued, 289

Gospel right, regarding, 258-260, 394-395; on settlement of minister, 258; early, a quasi-public town function, 258-259; first, 259; assumed some land lost, 259; on distribution of avails from, 259; limiting entitlement to portion of avails, 259-260; defining eligible religious society, 259-260; on administration of in unorganized areas, 260

First settled minister lands, regarding, 260, 262-263, 395-396; on administration of in unorganized areas, 162; distinctive provisions of, 262; allowing fee to go to minister, 262; on tax exemption of, 262; limiting term of leases, 262; relationship of to legislation on Gospel right, 262

Legislative, record regarding grammar schools in Orleans County reviewed, 248-252; efforts as affecting administrative results, 309-310

Legislature, effect on of court's attitude regarding obligation of contract, 181-187; as founder of lease lands trusts, 185, 187; attitude of court toward, 185-187; unable to cope with lease land problems arising from town line changes, 186; restricted by court rulings, 198; primarily responsible for tax exemption of lease lands, 204; method of treatment of individual situations, 226; conditions of turmoil of in early days, 230; interest of in lease lands shown in act of 1811, 231; uncertainty of regarding land problems, 232; consistency of in allowing tax exemption for lease lands, 240-241; confusion of regarding intent of town charters as to use of grammar school lands, 286; methods of regarding grants of grammar school lands, 287; attitude of regarding nomenclature of private schools, 291 n. 90

Power of, 134; regarding disposal of lease lands, 121, 127; as founder of trusts, 132-133, 287; over municipal corporations, 150-151; regarding presumptions, 152; lack of over land grants once made, 181; regarding taxation, 206, 210-211, as to retrospective provisions, 210, 211-212, as to exemptions and classification of property, 210-211, as to forms

- of tax, 211, as to taxing property of state and subdivisions, 211, as to distinction between governmental and proprietary property of municipalities, 211; over grammar school lands, 285-286
- Actions of, in adoption of common law, 139; regarding land titles, 158; in authorizing use of eminent domain power on land devoted to public use, 173; regarding easement on lease land, 175 n. 320; to redistribute avails of lease lands, 181; limited by court in affecting lease lands, 186; regarding tax exemption, 208; in confiscation of glebe, 216; in granting SPG rights to towns, 220; in first disposition of grammar school lands, 285; for administration of first settled minister land, 304
- Faults of, in lack of policy, 226, as to betterments acts, 232, as to tax exemption generally, 242, as to disposal of grammar school lots, 247; regarding lease lands, 263; in failure to provide sound system of administration for lease lands and trusts, 263; influence of on inadequate administration of lease lands, 319; notice of by court, 319 n. 12
- Reports to, in 1804 by University of Vermont, 268, 270, 270 n. 13, 271; in 1878 on lease lands income, 292-293, 301, 327; in 1882 on lease lands income, 292-293, 301, 327
- Lemington v. Stevens, 110, 192
- Listers, 60, 78, 79, 79 n. 40, 80 n. 41, 189, 193-195, 273, 274 n. 22
- Laws, 237; nature of, 208, 239; provision in for tax exemption of lease lands, 205, 207, 239-240
- Local officers, *see* Town officers
- Losses, of lease lands, 63-64, 70, 90-91, 93, 118, 125, 167, 299 n. 107; of college right, 127, 165-166; by presumption, 151-152, 165; by adverse possession, 158, 161-162; by eminent domain, 172; possibility of, 238; of some Gospel right lands assumed, 259; by University of Vermont, 271 n. 16, 272, 274; of SPG land, 274-275
- Lord v. Bigelow, 147
- Lumbering, *see* Forest, lands
- Lydius, Col. John Henry, 27, 30-31, 43-44
- McCarty, Virgil L., 14
- MacFarland, H. M., 266, 267 n. 5, 268, 269-270, 269 n. 9, 271, 271 n. 14, 274, 317, 318, 318 n. 10, 401 n. 1
- McNamara, Joseph A., 176-177
- Maidstone v. Stevens, 108, 111 n. 57
- Marvin v. Dennison, *et al.*, 179
- Massachusetts, land grants, 15, 23, 26, 29, 29 n. 21, 38; boundary, with New Hampshire, 22, 23, 24, 24 n. 9, 25, 33; with New York, 25
- Middlebury College, legislation regarding, 243
- Middlebury College v. Central Power Corp. of Vermont, 174, 199
- Minister, first settled, settlement of, 152-153, 258, 307, 308-309. *See also* First settled minister
- Ministerial right, *see* Gospel right
- Montpelier v. East Montpelier (1854, 1856), 149-151, 155, 183, 189 n. 40, 197, 198, 200, 257 n. 111
- Morgan v. Brighton, 189 n. 40
- Morgan v. Cree, 75 n. 34, 209-210, 323
- Moulton, Judge Sherman R., 100 n. 2, 105, 111 n. 59, 122 n. 98, 124, 126, 129, 131, 137 n. 162, 138, 145, 198, 219, 258, 324, 326, 328; dissenting opinion by in University of Vermont v. Ward, critique of, 397-399
- Municipal corporations, as trustees, of lease lands, 132, 152, 197, of property for religious purposes, 140, 198, of property for other than corporate use, 183; power of legislature over, 150-151; ability to hold fee of public lands questionable, 199-200; no distinction in taxability of governmental and proprietary property of, 211; early function of regarding Gospel lands, 258-259. *See also* Town; Towns
- Myrick, Rawson C., Secretary of State, 5, 78 n. 37
- Neill v. Ward, 69 n. 21, 170
- New Hampshire, land grants, 10, 11 n. 12, 13-14, 14 n. 26, 29, 29 n. 20, n. 21, 31, 33, 33 n. 28, 34, 35, 35 n. 34, 36, 38, 41-42, 44, 44 n. 60, 45, 60-61, 62, 64, 65, 67, 70, 74, 95, 176 n. 324, 185 n. 26, 208, 216, 220, 233, 287 n. 77, 299, 304, 319 n. 11, 361, 406, 407, phases of, 32-36, validated, 156; boundary, with Massachusetts, 22, 23, 24, 24 n. 9, 25, 33, with New York, 25, 33, 36, with Vermont, 5 n. 6, 21; doctrine on lease lands, 135-138, contrasted with Vermont, 126, reviewed by United States court, 219; controversy with New York, court's attitude to-

- ward, 155-157, ruling on by United States court, 217, attitude of Vermont legislature toward, 228, legislation on, 364; regarding treatment of first settled minister right, 219; regarding treatment of town school right, 219
- New York, land grants, 14, 14 n. 28, 15, 29-30, 33, 34, 44, 45, 61 n. 5, 64-65, 67, 71, 157, colonial phases of, 37-43, confirmations, 61; boundary, with Connecticut, 25, with Connecticut and Massachusetts, 25, 33, with Massachusetts, 25, with New Hampshire, 25, 33, 36, with Vermont, agreement on, 45, 53; controversy with New Hampshire, court's attitude toward, 155-157, ruling on by United States court, 217, attitude of Vermont legislature toward, 228, legislation on, 364
- Noble, Ralph E., Commissioner of Education, 302 n. 119
- North Troy School District v. Troy, 197
- Norwich University, legislation on, 243
- Nye, Mrs. Mary G., 85
- Obligation of contract, impairment of, 108, 109, 111, 113-114, 125, 180-195, 325; affecting tax exemption privilege, 181, 187; regarding town line changes, 181; as related to conditions annexed to grant, 183; attitude of Vermont court toward, not exceptional, 185-186; attitude of court respecting functions of local officers, 189-195; regarding taxation, 205-206
- O'Brien v. Holden, 196, 197
- Orange County Grammar School, 85; legislation on, 227, 248; records of exemplifying administrative conditions of grammar school lands, 288-289
- Orange County Grammar School v. Dodge, 111 n. 55
- Orange County Grammar School v. Parker, 109, 183
- Orange v. Barre, 195
- Order in Council, British, 1740, 22-23, 25; 1764, 21, 22, 36, 39, 40, 156, 157; 1767, 157. *See also* Boundary lines
- Orleans County grammar schools, legislative record on reviewed, 248-252
- Orr v. Hodgson, 221
- Paine v. Smead, 156
- Paine v. Webster, 105 n. 12, 106
- Parker, Alban J., Attorney General, 322, 323, 325
- Pawlet, Town of v. Daniel Clark, *et al.* 77 n. 36, 138, 216-220, 260 n. 130, 261, 263 n. 140
- Perkins, Admr. v. Blood, 162, 167
- Perpetual leases, *see* Durable leases
- Piper v. Meredith, 138, 324, 326, 398
- Police power, 177
- Policy, *see* Public, policy
- Pomeroy v. Mills, 200
- Population, changes in, 54-56, 54 n. 87, 101 n. 5
- Poultney v. Wells, 127, 181, 183
- Powers, Judge George M., 103 n. 8
- Powers and Peck, Admr. for Judevine v. Caledonia County Grammar School, 113, 115, 117-118, 119 n. 90, 121 n. 97, 128, 168, 196, 198, 203, 273, 275
- Pownal v. Myers, 128-129, 131, 132 n. 147, 137 n. 162, 147 n. 206, 197
- Prescription, titles by, 163-170; claim of not available in face of durable lease, 168. *See also* Presumptions
- Presumptions, of adverse grants, loss of lease lands by, 127, 151-152, 165; of acquiescence, 131, 169-170, as involving modification of trust, 129; of forfeiture of lease lands, not acceptable to court, 131; power of legislature regarding, 152; doctrine of respecting lease lands, 163; distinguished, 164; basis of explained, 164-165. *See also* Prescription
- Princetown patent, 41, 45
- Private agencies, administration of lease lands by, 80-85
- Proprietors, town, 3, 30-31, 42 n. 52, 45, 46, 62-63, 65-66, 66 n. 14, 67, 71, 71 n. 28, 73, 171-172; legislation on, 233-234, 365-368
- Public, charitable use, characteristics defined, 201; lands (rights, shares), 65, 71, 72, 73, 74, 75, 76, 80, lease lands no longer so after sale under 1935 and 1937 legislation, 134, ability of municipalities to hold fee of questionable, 199-200; use, 155 n. 239, 199-203, meaning of term, 174, superior national, 176, term distinguished, 199, in relation to easement, 200, distinguished from public charity, 200, distinguished from public charitable use, 201, in regard to taxation, 201, defined, 202; policy, problems of regarding lease lands, 166, 172, regarding taxation of lease lands, 206 n. 117, 209. *See also* Lease lands
- Public, pious and charitable use, 1, 11, 60, 73 n. 30, 135, 199, 201, 212-213. *See also* Court

- Putnam, Herbert E., 54 n. 88
- Quadrennial Abstract of Assessments, 5, 60, 60 n. 3
- Quadrennial assessment, 79
- Queen City Park Association v. Gale, 125
- Quinn v. Valiquette, 143
- Readsboro v. Woodford, 157
- Records, of State Treasurer, 85; of court, early, 101-103, inadequacy of, 106; administrative, epitomizing condition of administration of lease lands, 265; of Addison County Grammar School, 266 n. 3; of University of Vermont, 267, 268, 269; of town clerks, 272; of SPG, 277-278, 317; of grammar school lands, 288-289; of town lands, 295-296
- Religious, avails, distribution of by selectmen, 190-192, 309, limitations on, 190-191, in relation to determination of church membership, 191, in relation to problem of legal definition of religious group, 307, 308-309. *See also* Church lands; First settled minister lands; Gospel lands; Municipal corporations
- Rickard v. Dana, 112, 118 n. 85
- Ripton v. Brandon, 194-195
- Rood v. Willard, 283-284
- Rosenberg v. Taft, 118
- Rutland R. R. v. Central Vermont R. R., 210
- Rutland Ry., Light and Power Co. v. Clarendon Power Co., 202
- St. Albans Hospital v. Town of Enosburg, 212
- Sanborn v. Village of Enosburg Falls, 174
- Sargent v. Clark, 188 n. 36, 198
- Sawyer v. Newland, 159, 160, 171
- Schneyder, Hendrick, patent, 33, 35 n. 34, 39, 41
- Schools, districts as units of government in Vermont, 58 n. 96; legislation on, 238; types of organization, 256, 302; local influence on, 301-302. *See also* Town schools
- Secretary of State, 5, 52, 52 n. 85, 78, 268, 269
- Seigneuries, French, 26, 26 n. 14, 31 n. 24
- Selectmen, 77, 78, 79-80, 90, 94, 108, 125, 127, 189, 227, 231, 245, 251, 251 n. 87, 257, 261, 262, 284, 287 n. 76, 297, 299 n. 106, 300, 304; authority of to make leases, 110-111, 121, 183, 192-193; in relation to distribution of religious avails, 190-192, 303, 309; as agents of town for conveying lease lands under 1935 legislation, 193; duties of respecting taxation, 205; responsibility of regarding glebe, 216, 218; duty of respecting confiscation of SPG right, 220; legislation on, 237; duty of respecting disposition of income from grammar school land, 252; duties of in administration in Gospel right, 259
- Selectmen of Manchester v. Daniel Barber, 261 n. 134, 302 n. 120
- Selectmen of Rockingham v. Hunt, 106
- Seminary right, *see* College lands; University of Vermont
- Sequestered lands, not tax exempt, 60
- Settlement of minister, 152-153
- Sheldon v. Goodsel, 308
- Sheldon, Town of v. Sheldon Poor House Association, 214-215
- Shurtleff, Harry C., 88
- Slade, William, Jr., 13, 52
- Smith v. Blaisdell, 108
- Social worship of God, right of, *see* Gospel right
- Socialborough patent, 41
- Society for the Propagation of the Gospel in Foreign Parts, *see* SPG
- Society for the Propagation of the Gospel v. New Haven and Wheeler, 77 n. 36, 121 n. 95, 216, 220-221, 222, 232 n. 18, 260 n. 130, 278, 279, 284
- Society for the Propagation of the Gospel v. Pawlet and Ozias Clarke, 77 n. 36, 216, 221-222, 229 n. 10, n. 12, 230 n. 13, 246, 283, 284
- Society for the Propagation of the Gospel v. Sharon, 109, 121 n. 97, 125 n. 113, 158 n. 251, 161-162, 197 n. 78, 275, 284, 397-398; only Vermont court case bearing directly on legal status of SPG right, 283
- Sowles v. Minot, 171
- Sowma v. Parker, 177
- Speculation, land, 3, 18, 24, 27-28, 30-31, 32, 32 n. 26, 34, 35, 36, 40, 43, 44, 50, 63, 64-66, 66 n. 13, n. 14, 72, 73; legislation to prevent, 145-146.
- SPG lands, 2, 2 n. 1, 12, 13, 63, 77, 78, 83 n. 45, 84, 91 n. 55, 176-177, 216, 229 n. 12, 232 n. 18, 240 n. 38, 260-261, 266, 273 n. 20, 318, 405, 406; in relation to durable leases, 109, 120-121; question of conveyance of fee in, 121 n. 97; forest land, 121 n. 97, 283;

- taking of for Green Mountain National Forest, 176-177; actions of ejectment to secure, 180; legislation on, 245-246, 261, 385; losses of, 274-275; estimate of annual income from, 275; disposition of income from, 275-276, always to benefit of Episcopal Church in Vermont, 277; conveyance of by commuted rent, 275, 283; confusion of due to early practices, 277; ultimate control of in London until 1927, 277; transferred to Vermont Diocese in 1927, 277; early system of powers of attorney described, 278; early efforts of Vermont Episcopalians to secure, 278; long early period of inaction, 279; report on in 1823, 279; difficulties about with county agents, 280; state agent for, 281; efforts to centralize data on, 282; records on, 317. *See also* Diocese; Glebe
- Confiscation of, 19, 56, 120-121, 121 n. 95, 220, 245; invalidated by United States Supreme Court, 221
- Administration of, 80-81, 274-284; not effective in early days, 275; effects on of technique of, 275; evaluation of, 277; early system of prescribed by Society in London, 277; failure of Diocese to improve after 1927, 277; early developments in recorded, 277-278; description of system of, 280-282; modifications in system of since 1927, 281
- Adverse possession of (relation of to statutes of limitations), 158, 161-162, 222, 229, 275, 275 n. 27; protection from removed, 230, 245, 277
- Legal status of, 220, 222, 283; court rulings on, not so ample as with other public rights, 283; different in some respects from that of other rights, 283; in regard to tax exemption, 283
- Spiritual Atheneum Society of West Randolph v. Selectmen of Randolph, 191-192
- Starksboro v. Hinesburg, 182
- State of Vermont, lack of information on lease lands in state offices, 5; Forester, 11 n. 12, 18 n. 38, 69 n. 20, 313; state-local governmental relations, 57; irresponsibility regarding administration of lease lands, 78, 310-313, 320-321; Board of Education, 85, 86; Treasurer, records of, 85, regarding lease lands of Randolph school, 227; Forestry Service, 94-95; Forest, taking of lease lands for, 176; in position of administrator of lease lands, 227; legislation on state taxes, 238-240; Superintendent of Education, reports of on lease lands, 1875, 301, 1876, 219 n. 88, 1880, 289, 293 n. 96, 1888, 294
- State v. Clement National Bank, 210, 211, 323-324
- State v. Sylvester, 139
- State v. Auclair, 177
- Statutes of limitations, 109, 113-114, 121 n. 97, 125, 130, 151-152, 157-163, 200; regarding SPG lands, 158, 161-162, 222, 229, 275, 275 n. 27, 230, 245, 277, 283; as related to easements, 158-159; ineffective for lease lands, 162; review of by United States court, 222; legislative policy on application of, 226; regarding lease lands, 228-231, 364-365; relation of to betterments acts, 231; final act affecting lease lands, in 1854, 231; recommendation on relative to lease lands, 326. *See also* Adverse possession
- Statutes, judicial construction of, 144-146, 159, 173; on taxation, 328
- Stearns v. Miller, 194
- Stern v. Sawyer, 184
- Stevens v. Dewing, 107, 109, 397
- Stone, Mason S., 287 n. 77
- Story, Justice Joseph, 217, 222, 229, 229 n. 12, 230, 246, 261, 261 n. 135, 263, 283
- Strong v. Garfield, 108
- Sub-leasing, 96
- Superintendent of Education, State, reports of on lease lands, 1875, 301, 1876, 291 n. 88, 1880, 289, 293 n. 96, 1888, 294
- Surveying, problems of in relation to lease lands, 6, 6 n. 6, 17, 39, 41, 48, 50, 61, 66-70, 73, 170, 406
- Swanton, Village of v. Town of Highgate, 140-141
- Tax, exempt lands, viii, 1, 11, 60, 74, 79, 80 n. 41, in Wheelock, 75; abatement of for lease lands, 208; definitions of, 210; rates, disparity of from lease rent rates, 316-317. *See also* Taxation
- Exemption, 90-91, 125, 134, 204-216; sequestered lands not exempt, 60; court's attitude toward, 101, 193, respecting implied exemption, 323; attitude of United States court toward, 325; in relation to obligation of contract, 181, 187; for

- lease lands, dealt with in only one Vermont case, 182-183; related to concept of public use, 199; related to durable leasing, 204; Vermont cases in which lease lands mentioned, 204; primarily a legislative matter, 204; public attitude toward, 204 n. 114; charter provisions respecting, 206; perpetual, 206-207, 253; legislation on, 207-208, 212-213, 240-243, 262 n. 137, 382-384; from proprietors' taxes, 208; from early special taxes, 208; actions of legislature on, 208; purpose of, 209; related to public policy, 209; in Wheelock, 209-210; general policy on in Vermont, 212; strict judicial construction of privilege of, 212; legislative policy on, 226, lack of, 242; related to public, pious and charitable uses, 212-213; policy distinguished for lease lands and for other charitable property, 213; related to use of property, 213-214; principles of, 213-216; related to location of property, 214-215; in listers' laws, 239-240; by abatement, 239 n. 35; trend away from, 242; for first settled minister right, 262, 305 n. 127; status of SPG right, 283; influence of on tax structure in Vermont, 317-318; inquiry about in 1945 legislative session, 321; opinion on by Attorney General, 322-324
- Legislation, court's attitude toward, 187; on assessment of, 195; for unorganized areas, 237; on collection of, 238; early, related to lease lands, 238; on state taxes, 238-240, 378-380; on county taxes, 380-382
- Taxation, 138 n. 166; Commission on Forest, report of, 11 n. 12, 18 n. 38, 271, 275, 299 n. 107, 316 n. 2, n. 3, 317, 317 n. 8; of owner or possessor, 118, 125, 324, 326; of municipally owned utility, 140-141; related to public use, 201; of Gospel lot, 205; of improvements on lease lands, 205; in relation to obligation of contract, 205-206; power of legislature regarding, 206, 210, as to classification and exemption, 210-211, as to taxing property of municipalities, 211, as to taxing property of state, 211; related to public policy, 206 n. 117; possibility of as to lease lands, 209; recommendation on respecting lease lands, 316 n. 2; forest, complexity of law of, 317; relation of to effectiveness of 1937 legislation on lease lands, 326; court's attitude toward, 328, local, 323, classification, 324. *See also* Tax
- Taxes, Commissioner of, 5, 16, 16 n. 34, 58, 59-60, 75 n. 34, 239 n. 35, 310; report of to legislature on tax exemptions, 242; information of on lease lands, 313
- Taylor v. Brown, 125
- Terminology, problems of respecting lease lands, vii, 3, 4, 9-12, 90-91, 91 n. 54, 321, 322 n. 15, 405
- Terrett, *et al.* v. Taylor, *et al.*, 182, 186, 220 n. 181
- Timber, *see* Forest land
- Town, clerk, in relation to lease lands, 83, 86, 87, 295, 296, 237-238, 272; as trustee of lease lands, 150-151, 152, 197, 198, 201; lease lands, 185; treasurers, in relation to lease lands, 295, 297, 299, 327; reports, condition of, 298, treatment in of first settled minister right, 305; proprietors, *see* Proprietors
- Charters, Wentworth, 1, 2, 2 n. 2; number of, 12-17, Vermont, 53, judicial construction of, 127, validation of by acquiescence, 157; variants in of lease land reservations, 361-362
- Schools, 2; legislative fluctuations in policy on, 254-255; legislation on, 254-258
- School lands, 3, 18 n. 39, 62, 63, 72, 109-110, 123, 132, 162; conveyance of, 108; in relation to durable leases, 112; as controlled by selectmen, 189; in New Hampshire, 219; distribution of avails from, 257-258; legislation on, 260, 393-394
- Lines, problems of relating to lease lands, 5, 6 n. 6, 14, 50, 71, 95, 113 n. 65, 123 n. 102, 127, 155, 175 n. 320, 187-189, 235, 319; involving distribution of avails after incorporation of city, 149-151; as related to obligation of contract, 181; inability of legislature to cope with, 186; when new town created, 183; technique of legislation on, 188; legislation on, 225, 368-375; as to re-assignment of lease lands, 189; in relation to quality of administration of lease lands, 189
- Officers, in relation to lease lands, 60, 78-80, 94, 95, 242; lack of information of, 5, 6; court's attitude toward,

- 189-195; legislation on, 237-238, 254, 376-378. *See also* Listers; Selectmen
- Administration, report of by Vermont Educational Commission, 295-296; effect of localism on, 301-302; evaluation of, 303; attitude of people toward, 303
- Of lease lands, 295-303; as found in review of town reports for 1946, 297-300; as to income from Gospel right, 299; evaluation of, 299; income from, 301; nature of causes of litigation from, 302-303
- Towns, name changes of, 16-17; as units of government in Vermont, 58; lacking public lands, 70; with small-sized public shares, 70; having public lands different from charter provisions, 70; having lost public lands, 70; responsible for administration of several classes of public lands, 295; manner of dividing of into severalty, 320. *See also* Municipal corporations
- Townsend v. Downer, 156-157, 160, 164-165, 167-168
- Tracy v. Atherton, 158-159, 160, 168
- Treasurer, state, 85, 227; county, 256, 257 n. 110, 260, 262, 304, 311; town, 295, 297, 299, 327
- Trustees, of lease lands, lack of interest of, 76-78; power of only to lease, 122, 127; power of broadened by 1935 legislation, 131-133; town as, 150-151, 152, 197; position of regarding eminent domain condemnation, 173, 174; must use trust properly, 182; not supervised effectively, 184-185; protected from recovery under betterments acts, 232; empowered to recover in actions of ejectment, 235; University of Vermont, power of, 273; Diocese, 275-276; grammar school boards, 288; tendency of to make new leases at old rentals, 316; interest of, 317. *See also* Trusts
- Trusts, 117-118, 121, 121 n. 97, 132, 151, 195-199; titles of trustees, 122; powers of trustees of broadened, 124; modification of, 127, 128-129, 131, 132-133; public and private distinguished, 131-132; town as trustee, 132, 150-151, 181, 201, for religious property, 140, 198; legislature as founder of, 132-133, 187; public lands not trusts in New Hampshire, 136-137; beneficiaries of, 150-151, 152; as affected by town line changes, 155; consent of all parties to necessary for change in, 181; in relation to obligation of contract, 181; of non-governmental town property, 183, 186, 189, 198; fixed by court in terms of original charter provisions, 188-189; perpetual and irrevocable, 196; inflexibility of, 197; supervision of not required by court, 198; unknown legally at time of grants of glebe, 217; maintenance of required when land conveyed under 1925 act, 227; power to assure accomplishment of purpose of retained by legislature, 287. *See also* Trustees
- Underhill, Town of v. Town of Jericho, 68 n. 18, 187 n. 35
- United States Supreme Court, lease land cases in, 216-223, *see* Pawlet v. Clark; Society for the Propagation of the Gospel v. New Haven and Wheeler; Society for the Propagation of the Gospel v. Pawlet and Clarke
- United States v. United States Fidelity and Guaranty Co., 212
- Universalist Society, Fletcher v. Leach, 191
- University of Vermont, 72, 72 n. 29, 78, 86-87, 108, 119-122, 123, 128, 133, 160-161, 161 n. 261, 165-166, 168-169, 169 n. 301, 216, 227, 243-245, 266, 318, 319, 320, 327, 398; administration of lease lands by, 87 n. 49, 266-274, early, 268, negligent, 270-271, leasing practice, 272; legislation on, 243-245, 384-385; not a true state institution, 244; land office of, 267; 1804 report of to legislature, 268, 270, 270 n. 13, 271; land records of, 269; lease land income of not ascertained, 271; losses by of lease lands, 271 n. 16, 272, 274; conveyance by of lease land, 272; forest lands of, 272; powers of regarding lease lands, 273; record of litigation of, 274; attitude of court toward, 274; report on condition of, 311-312
- University of Vermont v. Carter, 91 n. 53, n. 54, 168-169
- University of Vermont v. Joslyn, 109, 146, 160-161
- University of Vermont v. Reynolds, 78, 127, 165-166, 167, 168, 172, 197 n. 78, 200, 209, 274, 274 n. 23, n. 24
- University of Vermont v. Ward, 78, 87 n. 48, 100 n. 2, 105, 105 n. 14, 106, 113 n. 70, 119-122, 123, 125, 138, 139, 142, 142 n. 183, 145, 196, 273 n. 21, 324, 397-399
- Unorganized areas, governmental ad-

- ministration in, 15-16; legislative provisions for first settled minister lot in, 162; legislation on, 236-237; provision for education of children living in, 256-257. *See also* Gores
- Use, public, pious and charitable, *see* Public, pious and charitable use
- Vermont, towns, public rights in, 2; period of independence of, 36-37, 36 n. 39; character of people of, 92-97; doctrine of durable leases, 105-106; State Forest, 176; general policy of regarding tax exemptions, 212; difficulties of in supporting and administering common schools, 255; local influence on administration in, 301-302; University of, *see* University of Vermont
- Boundaries of, with New Hampshire, 5 n. 6, 21; agreement on with New York, 45, 53
- Land grants, 14, 14 n. 28, 15, 50-51, 53, 67, 68, 70-71, 72; re-grants, 50
- Government, conditions of, 47-48, under New York, 45-47, under New Hampshire, 46, 46 n. 64, under Vermont, 47, 48-50, 51-53; state-local relations of, 57; units of, counties, 57, cities, 57-58, villages, 57-58, towns, 58, school districts, 58 n. 96; state, 58
- Educational Commission, report of, 288 n. 79, n. 80, 293-294, 295-296, 301, 302 n. 119, 303, 327; experience of with town officers and town records, 297
- Vermont Hydro-Electric Corp. v. Dunn, 173-174
- Vermont, State of v. State of New Hampshire, 5 n. 6, 13, 21 n. 1, 25 n. 13
- Victory v. Wells, 151-152, 155 n. 239, 162, 167, 186 n. 31, 197 n. 78, 200
- Walloomsack patent, 29, 33, 35 n. 34, 41, 43, 45
- Warranty deed to lease land, voided by court, 108
- Washington County Grammar School, 59-60, 59 n. 1, 64 n. 9, 82 n. 44, 85, 88; character of evolution of, 290-291
- Water Conservation Board, 58
- Wells v. Savannah, 324-325
- Wentworth towns (charters, grants), 1, 2, 2 n. 2, 10, 11 n. 12, 13-14, 14 n. 26, 29, 29 n. 20, n. 21, 31, 33, 33 n. 28, 34, 35, 35 n. 34, 36, 44, 44 n. 60, 45, 62, 64, 65, 67, 70, 74, 95, 176 n. 324, 185 n. 26, 208, 216, 220, 233, 287 n. 77, 299, 304, 319 n. 11, 361, 406, 407; public shares in, 2, 60-61; phases of granting, 32-36; legal relationship of to state, 134-135; validated, 156. *See also* Land grants
- Wheelock, Eleazer, 75, 76
- Wheelock, Town of, 75, 147-148, 227; tax exemption in, 209-210
- White v. Everest, 69 n. 21
- White v. Fuller, 109-110, 116-117, 162-163, 167, 189, 198, 253 n. 98
- Whitelaw, James, 67, 68, 327
- Whiting v. City of Burlington, 139, 140
- Willard v. Benton, 111, 111 n. 57
- Willard Fuller's Estate, *In re*, 112
- Williams, Samuel, 12-13, 13 n. 18
- Williams v. Goddard, 127, 138, 148, 153-155
- Williams v. North Hero, 132 n. 148, 147, 152-155, 308-309, 319 n. 12
- Wills, judicial construction of, 144
- Wilson, Guy, 81, 84, 277, 282, 283
- Wilson, Joseph F., 7, 55 n. 90, 81, 81 n. 43, 83 n. 45, 84, 121 n. 97, 277, 282, 282 n. 51, n. 53, 283, 317, 318
- Woodard, Miss Florence M., 3, 3 n. 5, 13, 65

